

**TRIBAL-STATE GAMING COMPACT**

**Between the**

**COYOTE VALLEY BAND OF**

**POMO INDIANS**

**and the**

**STATE OF CALIFORNIA**

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**AMENDED  
TRIBAL-STATE GAMING COMPACT  
BETWEEN THE  
STATE OF CALIFORNIA  
AND THE  
COYOTE VALLEY BAND OF POMO INDIANS**

The Coyote Valley Band of Pomo Indians, a federally recognized Indian tribe listed in the Federal Register as the Coyote Valley Band of Pomo Indians, California (Tribe), and the State of California (State) enter into this Amended Tribal-State Gaming Compact (Amended Compact), pursuant to the Indian Gaming Regulatory Act of 1988 (IGRA), and section 15.1 of the parties' Tribal-State Gaming Compact entered into in 2004 (2004 Compact).

**PREAMBLE**

**WHEREAS, the State and the Tribe entered into the 2004 Compact; and**

**WHEREAS, the State and the Tribe recognize that the exclusive rights that the Tribe will enjoy under this Amended Compact create a unique opportunity for the Tribe to operate a Gaming Facility in an economic environment free of competition from Class III Gaming on non-Indian lands in California and that this unique economic environment is of great value to the Tribe; and**

**WHEREAS, section 15.1 of the 2004 Compact provides that it may be amended upon written agreement of both parties, the parties agreed in writing to negotiate over a limited number of issues including environmental protection requirements, public health and safety requirements, minimum internal control standards and revenue share, and negotiated mutually agreeable amendments to the 2004 Compact related to those issues pursuant to section 15.1, all of which for the convenience of the parties are incorporated and consolidated into this Amended Compact together with the provisions of the 2004 Compact that have not been amended; and**

**WHEREAS, the Tribe, in consideration of the exclusive rights enjoyed by the Tribe, the right to operate the desired number of Gaming Devices, and the other meaningful concessions offered by the State in good faith**

negotiations, agrees to make a fair revenue contribution to the State, to enter into arrangements to mitigate to the extent practicable the off-reservation environmental and direct fiscal impacts on local communities and local governments, to safeguard against criminal activity, and to offer meaningful consumer and employee protections; and

WHEREAS, at the present time, the Tribe is operating its Gaming Facility in temporary sprung structures that must be completely replaced; and

WHEREAS, changed circumstances in the economy and increased market competition, both currently and anticipated in the near future, have and will continue to cause a substantial reduction in revenues generated at the Gaming Facility; and

WHEREAS, the Tribe maintains that if the Tribe were required to continue operating under the terms of the 2004 Compact, the positive impact of the Tribe's Gaming Activities would not be possible, the Tribe would not materially benefit from the 2004 Compact, and the Tribe's Gaming Facility would cease to be economically viable; and

WHEREAS, while the Tribe has met all of its financial obligations to the State pursuant to the 2004 Compact, the Tribe represents that its Gaming Facility cannot currently generate enough revenue for the Tribe to cover the Gaming Facility's operating expenses, finance the required replacement and expansion of the existing Gaming Facility, and make payments to the State required by the 2004 Compact; and

WHEREAS, while the Tribe represents that it has no disputes with the County of Mendocino and its primary creditor pursuant to the Tribe's agreements with these entities, the Tribe represents that its Gaming Facility cannot currently generate enough revenue for the Tribe to cover the Gaming Facility's operating expenses, finance the required replacement and expansion of the existing Gaming Facility, and make the payments that the Tribe is obligated to make to the County of Mendocino and the Tribe's creditor; and

WHEREAS, to assist the Tribe to obtain the long-term financing necessary to ensure that the Tribe continues to meet its obligations under the 2004 Compact and its agreements with the County of Mendocino and the Tribe's

primary creditor, the State and the Tribe agree to change the structure of the Tribe's payment obligations to the State, and the Tribe, the County of Mendocino and the Tribe's primary creditor each agree to restructure their respective financial arrangements; and

WHEREAS, the Tribe is committed to improving the environment, education status, and the health, safety, and general welfare of its members and the local residents; and

WHEREAS, the State has determined there is a public benefit from its receipt of payments from the Tribe into the Special Distribution Fund created by the Legislature, which this Amended Compact will require from the Tribe; and

WHEREAS, the parties agree that the Tribe's revenue contribution to the State and other federally recognized Indian tribes in California is fair in light of the need for the Tribe to retain sufficient revenues in the initial years of this Amended Compact, and is meant to promote strong Tribal government and self-sufficiency, provide government services for nearly four hundred (400) Tribal members, and significantly reduce the debt incurred as a result of the Tribe's efforts to address local concerns; and

WHEREAS, the Tribe agrees to increased environmental and public protection measures, and minimum internal control standards for its Gaming Operation and Gaming Activities; and

WHEREAS, in recognition of the Tribe agreeing to increased environmental and public protection measures, and minimum internal control standards for its Gaming Operation and Gaming Activities, the State agrees to amend the 2004 Compact to afford the Tribe the opportunity to be able to afford to replace its existing Gaming Facility and expand its operations such that it may eventually operate additional Gaming Devices in an amount greater than it currently operates; and

WHEREAS, the State and the Tribe have concluded that this Amended Compact is entered in good faith, is fair and reasonable, protects the interests of the Tribe and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

**WHEREAS, the State and the Tribe recognize that this Amended Compact is authorized and negotiated and shall take effect pursuant to IGRA; and**

**WHEREAS, the General Council of the Tribe is comprised of every member of the Tribe over the age of 18 and a majority of such General Council voted to approve this Amended Compact pursuant to the process authorized by the Tribe's Constitution; and**

**WHEREAS, the State and the Tribe agree that all terms of this Amended Compact are intended to be binding and enforceable.**

**NOW, THEREFORE, the Tribe and the State hereby amend the 2004 Compact and agree as follows:**

**SECTION 1.0. PURPOSES AND OBJECTIVES.**

The terms of this Amended Compact are designed to:

- (a) Evidence the goodwill and cooperation of the Tribe and the State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.
- (b) Develop and implement a means of regulating the Class III Gaming to ensure its fair and honest operation in a way that protects the interests of the Tribe, the State, its citizens, and local communities in accordance with IGRA, and through that regulated Class III Gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and its governmental services and programs.
- (c) Promote ethical practices in conjunction with that gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's Gaming Operation, protect against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal

government gaming, and protect the patrons and employees of the Gaming Operation and the local communities.

## **SECTION 2.0. DEFINITIONS.**

**Sec. 2.1.** “Amended Compact” means this compact.

**Sec. 2.2.** “Applicable Codes” means the California Building Code and the Public Safety Code applicable to the County of Mendocino as set forth in Titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Amended Compact, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire, and safety.

**Sec. 2.3.** “Applicant” means an individual or entity that applies for a Tribal gaming license or State Gaming Agency determination of suitability.

**Sec. 2.4.** “Class III Gaming” means the forms of class III gaming defined in 25 U.S.C. § 2703(8) and by the regulations of the National Indian Gaming Commission.

**Sec. 2.5.** “Financial Source” means any person or entity who, directly or indirectly, extends financing to the Gaming Facility or Gaming Operation.

**Sec. 2.6.** “Gaming Activity” or “Gaming Activities” means the Class III Gaming activities authorized under this Amended Compact in sections 3.1 and 4.1.

**Sec. 2.7.** “Gaming Device” means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution. Each player station of a multi-player slot machine constitutes a separate Gaming Device. “Gaming Device” includes, but is not limited to, instant lottery game devices and video poker devices, but does not include electronic, computer or other technological aids that qualify as class II gaming (as defined under IGRA).

**Sec. 2.8.** “Gaming Employee” means any natural person who (a) conducts, operates, maintains, repairs, accounts for, or assists in any Gaming Activities, or is in any way responsible for supervising such Gaming

Activities or persons who conduct, operate, maintain, repair, account for, or supervise any such Gaming Activities, (b) is in a category under federal or tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility in which Gaming Activities are conducted that are not open to the public.

**Sec. 2.9.** “Gaming Facility” or “Facility” means any building in California in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or funds of the Gaming Operation are maintained (excluding offsite facilities dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, rather than providing that operation with an incidental benefit. Notwithstanding the foregoing, “Gaming Facility” does not include fuel stations or convenience stores in which no Gaming Activities are conducted and that are not designed to substantially cater to gaming patrons. Nothing herein prevents the conduct of class II gaming (as defined under IGRA) within the Gaming Facility.

**Sec. 2.10.** “Gaming Operation” means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

**Sec. 2.11.** “Gaming Ordinance” means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on the Tribe’s Indian lands in California and approved under IGRA.

**Sec. 2.12.** “Gaming Resources” means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, Gaming Devices and ancillary equipment, implements of Gaming Activities such as playing cards, furniture designed primarily for Gaming Activities, maintenance or security equipment and services, and Class III Gaming consulting services. “Gaming Resources” does not include professional accounting and legal services.

**Sec. 2.13.** “Gaming Resource Supplier” means any person or entity who, directly or indirectly, does, or is deemed likely to, manufacture,

distribute, supply, vend, lease, purvey, or otherwise provide to the Tribe's Gaming Operation or Facility at least twenty-five thousand dollars (\$25,000) in Gaming Resources in any twelve (12)-month period, or who, directly or indirectly, receives, or is deemed likely to receive, in connection with the Tribe's Gaming Operation or Facility, at least twenty-five thousand dollars (\$25,000) in any consecutive twelve (12)-month period, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if but for the purveyance, the purveyor is not otherwise a Gaming Resource Supplier, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gaming Operation.

**Sec. 2.14.** "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. § 1166 et seq. and 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

**Sec. 2.15.** "Interested Parties" means (i) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, and (ii) persons, groups or agencies that request in writing a notice of preparation of a Tribal Environmental Impact Report, as defined in section 11.2, or have commented on the Project in writing to the Tribe or the Mendocino County Board of Supervisors.

**Sec. 2.16.** "Management Contractor" means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

**Sec. 2.17.** "Net Win" means drop, plus the redemption value of expired tickets, less fills, less payouts, less that portion of the Gaming Operation's payments to a third-party wide-area progressive jackpot system provider that is contributed only to the progressive jackpot amount.

**Sec. 2.18.** "NIGC" means the National Indian Gaming Commission.

**Sec. 2.19.** “Project” means any activity occurring on Indian lands, a principal purpose of which is to serve the Tribe’s Gaming Activities or Gaming Operation, and which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect physical change in the off-reservation environment. This definition shall be understood to include, but not be limited to, the construction or planned expansion of any Gaming Facility and any other construction or planned expansion thereof, a principal purpose of which is to serve a Gaming Facility rather than provide that facility with an incidental benefit, as long as such construction or expansion causes a potentially significant direct or indirect physical change in the off-reservation environment.

**Sec. 2.20.** “Significant Effect(s) on the Off-Reservation Environment” is the same as “Significant Effect(s) on the Environment” and occur(s) if any of the following conditions exist:

- (i) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.
- (ii) The possible effects on the off-reservation environment of a Project are individually limited but cumulatively considerable. As used herein, “cumulatively considerable” means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effect of probable future projects.
- (iii) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

**Sec. 2.21.** “State” means the State of California or an authorized official or agency thereof designated by this Amended Compact or by the Governor.

**Sec. 2.22.** “State Designated Agency” means the entity or entities designated or to be designated by the Governor to exercise rights and fulfill responsibilities established by this Amended Compact.

**Sec. 2.23.** “State Gaming Agency” means the entities authorized to investigate, approve, regulate and license gaming pursuant to the Gambling Control Act (Chapter 5 (commencing with section 19800) of Division 8 of the Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.

**Sec. 2.24.** “Tribal Chairperson” means the person duly elected under the Tribe’s Constitution to serve as the primary spokesperson for the Tribe.

**Sec. 2.25.** “Tribal Gaming Agency” means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the NIGC, primarily responsible for carrying out the Tribe’s regulatory responsibilities under IGRA and the Tribal Gaming Ordinance. No person employed in, or connected with, the management, supervision, or conduct of any Gaming Activity may be a member or employee of the Tribal Gaming Agency.

**Sec. 2.26.** “Tribe” means the Coyote Valley Band of Pomo Indians, a federally recognized Indian tribe, or an authorized official or agency thereof.

## **SECTION 3.0. SCOPE OF CLASS III GAMING AUTHORIZED.**

### **Sec. 3.1. Authorized Class III Gaming.**

- (a) The Tribe is hereby authorized to operate only the following Gaming Activities under the terms and conditions set forth in this Amended Compact:
- (1) Gaming Devices.
  - (2) Any banking or percentage card games.
  - (3) Any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe

will not offer such games through use of the Internet unless others in the State not affiliated with or licensed by the California State Lottery are permitted to do so under state and federal law.

- (b) Nothing herein shall be construed to preclude the Tribe from offering class II gaming or preclude the negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.
- (c) Nothing herein shall be construed to authorize the operation of the game known as roulette, whether or not played with or on a mechanical, electro-mechanical, electrical, or video device, or cards, or any combination of such devices, or the operation of any game that incorporates the physical use of a die or dice.
- (d) The Tribe shall not engage in Class III Gaming that is not expressly authorized in this section and section 4.1.

#### **SECTION 4.0. AUTHORIZED LOCATION OF GAMING FACILITIES, NUMBER OF GAMING DEVICES, AND REVENUE CONTRIBUTION.**

**Sec. 4.1. Authorized Gaming Facilities and Number of Gaming Devices.** The Tribe may engage in Class III Gaming at no more than two Gaming Facilities located within the existing Indian lands of the Coyote Valley Reservation, as specifically described in Appendix A, at the time of execution of this Amended Compact or on any new lands taken into trust for gaming by the United States contiguous thereto. The Tribe is entitled to operate up to a total of one thousand two hundred fifty (1,250) Gaming Devices pursuant to the conditions set forth in sections 3.1, 4.2 and 4.3.1. If the Tribe operates two (2) Gaming Facilities, one (1) of the two (2) shall have no more than twenty-five (25) Gaming Devices.

#### **Sec. 4.2. Conditions Precedent to Change in Revenue Sharing Contributions.**

- (a) As part of the process by which this Amended Compact has been negotiated, the State and the Tribe have agreed that the

Tribe must not only renegotiate its commitments to the State as set forth in this Amended Compact, but also renegotiate its financial commitments with the County of Mendocino and with its primary creditor. In view of the Tribe's current financial challenges and the market condition for the Gaming Activities, the State and the Tribe agree that for the Tribe to benefit from its Gaming Activities, and for the State's concessions to provide value to the Tribe, the County and the Tribe's primary creditor must, as the State has done in this Amended Compact, make material financial concessions. Accordingly, as conditions precedent to the revenue contribution set forth in section 4.3.1, the Tribe must reach new agreements with the County and the Tribe's primary creditor that will provide material financial concessions that will enable the Tribe to benefit from its Gaming Activities.

- (b) The Tribe in its sovereign capacity has voluntarily entered into a renegotiated agreement with the County of Mendocino. By executing this Amended Compact, the Governor represents that he has reviewed that renegotiated agreement and that it meets the condition set forth in subdivision (a).
- (c) The Tribe in its sovereign capacity is currently negotiating with its primary creditor toward an agreement that can be reached independently with that entity. To satisfy the condition precedent set forth in subdivision (a), the Tribe must, within thirty months (30) months of the effective date of this Amended Compact, present to the Governor a written agreement that meets the condition described. The Governor shall have the sole discretion to determine whether such agreement meets the condition set forth in subdivision (a), and in making that determination may consider, without limitation, whether the Tribe's primary creditor has made material concessions such as reducing principal, lowering interest rates, forgiving accrued interest due, forgiving fees and costs, and subordinating its debt to a new lender; provided, however, the Governor's determination as to whether the Tribe has satisfied these conditions shall not be unreasonably withheld. The Governor shall make the determination required by this subdivision

within thirty (30) days of receiving the written agreement from the Tribe.

(d) Prior to the Governor making the determination specified in subdivision (c), the Tribe shall continue to make the revenue contributions set forth in section 4.3.1, subdivision (b) of the 2004 Compact (“2004 Compact Contributions”), which are:

(1) So long as the Tribe operates no more than seven hundred fifty (750) Gaming Devices and generates no more than thirty million dollars (\$30,000,000) in Net Win from its Gaming Devices on an annual basis based on a calendar year, its payments shall be based on the following schedule based on the number of Gaming Devices operated:

Number of Gaming Devices	Fee per Device per Annum
0-250	\$4600
251-500	\$4800
501-750	\$5100

The number of Gaming Devices operated each quarter will be calculated based upon the maximum number of Gaming Devices operated during that quarter.

(2) At any time that the Tribe generates more than thirty million dollars (\$30,000,000) in Net Win from its Gaming Devices on an annual basis based on a calendar year, or if it operates more than seven hundred fifty (750) Gaming Devices at any time in a given calendar year, it shall thereafter, including that calendar year, pay the following percentages of its Net Win from the operation of all Gaming Devices:

Annual Net Win	Percentage
\$0-\$50 million	12%
Over \$50 million to \$100 million	15%
Over \$100 million to \$150 million	18%

Over \$150 million to \$200 million	22%
Over \$200 million	25%

If this subdivision (d)(2) becomes applicable within a given calendar year, the Tribe shall calculate any discrepancy between the quarterly amount(s) paid during that year pursuant to subdivision (d)(1) and the quarterly amount due for the preceding quarters pursuant to subdivision (d)(2) and shall remit such amount owed to the State pursuant to subdivision (d)(2) as an addition to its next quarterly payment.

(e) The State Gaming Agency shall hold in trust for the Tribe the

revenue contributions received pursuant to subdivision (d) for the purpose of assisting the Tribe to restructure and service its debt (“Debt-Service Funds”). Such amounts held in trust shall not accrue interest. If the Governor makes the determination specified in subdivision (c) within thirty (30) months of the effective date of this Amended Compact, the State Gaming Agency shall, within thirty (30) days of the Governor’s determination, reimburse all Debt-Service Funds to the Tribe; immediately subsequent to that determination being made, the Tribe shall make the revenue contributions set forth in section 4.3.1 of this Amended Compact.

(f) If the Governor does not make the determination specified in subdivision (c) within thirty (30) months of the effective date of this Amended Compact, the Tribe shall make the 2004 Compact Contributions for the duration of this Amended Compact to the agency, trust, fund, or entity the State Director of Finance, pursuant to law, from time to time, specifies to the Tribe in writing, and the State Gaming Agency shall cease accepting or holding such funds in trust for the Tribe. Further, the State Gaming Agency shall transfer the accumulated Debt Service Funds to the agency, trust, fund, or entity the State Director of Finance, pursuant to law, specifies.

**Sec. 4.3. [INTENTIONALLY OMITTED.]**

**Sec. 4.3.1. Revenue Contribution.**

- (a) (1) The Tribe shall, until four (4) years after the commencement of operations of a new Gaming Facility, or if the Tribe operates more than three hundred fifty (350) Gaming Devices in the existing sprung structures Gaming Facility, until six (6) years after the end of the quarter in which more than three hundred fifty (350) Gaming Devices are in operation, whichever date is sooner, pay quarterly to the State Gaming Agency for deposit into the Special Distribution Fund created by the Legislature, in accordance with the following schedule:

<b>Number of Gaming Devices in Quarterly Device Base</b>	<b>Percentage of Average Gaming Device Net Win</b>
1-350	0%
351-600	7%
601-750	10%
751-1000	12%
1001-1250	15%

For purposes of this section and section 12.2 only, a new Gaming Facility is defined as a Gaming Facility other than the Tribe's existing sprung structures Gaming Facility, but does not include a Gaming Facility with twenty-five (25) Gaming Devices or less. The payment specified herein has been negotiated between the parties as a fair contribution, based upon the Tribe's market conditions, its circumstances, and the rights afforded under this Amended Compact.

- (2) The Tribe shall, beginning on the day after the period identified in section 4.3.1, subdivision (a)(1), ends and until the termination of this Amended Compact, pay quarterly to the State Gaming Agency for deposit into the

Special Distribution Fund created by the Legislature, in accordance with the following schedule:

<b>Number of Gaming Devices in Quarterly Device Base</b>	<b>Percentage of Average Gaming Device Net Win</b>
1-250	0%
251-350	7%
351-600	10%
601-750	12%
751-1250	15%

The payment specified herein has been negotiated between the parties as a fair contribution, based upon the Tribe's market conditions, its circumstances, and the rights afforded under this Amended Compact.

- (b) (1) The Tribe shall remit to the State Gaming Agency for deposit into the Special Distribution Fund the payments referenced in subdivision (a) in quarterly payments. The quarterly payments shall be based on the Net Win generated during that quarter from the Gaming Devices, which payments shall be due on the thirtieth day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter).
- (2) If the Gaming Activities authorized by this Amended Compact commence during a calendar quarter, the first payment shall be due on the thirtieth day following the end of the first full quarter of the Gaming Activities and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter.
- (3) All quarterly payments shall be accompanied by the certification specified in subdivision (d).

- (c) The quarterly payments due under this section shall be determined by first determining the total number of all Gaming Devices operated by the Tribe during a given quarter (“Quarterly Device Base”). The “Average Device Net Win” is calculated by dividing the total Net Win from all Gaming Devices during the quarter by the Quarterly Device Base. The Quarterly Device Base is equal to the sum total of the number of Gaming Devices in operation for each day of the calendar quarter divided by the number of days in the calendar quarter that the Gaming Operation operates any Gaming Devices during the given calendar quarter.
- (d) At the time each quarterly payment is due, regardless of whether any monies are owed, the Tribe shall submit to the State a certification (the “Quarterly Net Win Contribution Report”) that specifies the following:
- (1) calculation of the Quarterly Device Base;
  - (2) the Net Win calculation reflecting the quarterly Net Win from the operation of all Gaming Devices (broken down by Gaming Device);
  - (3) the Average Device Net Win;
  - (4) the percentage(s) applied to the Average Device Net Win pursuant to subdivision (a); and
  - (5) the total amount of the quarterly payment paid to the State.

The Quarterly Net Win Contribution Report shall be prepared by the chief financial officer of the Gaming Operation and shall also be sent to the State Gaming Agency.

- (e) At any time after the fourth quarter, but in no event later than April 30 of the following calendar year, the Tribe shall provide to the State Gaming Agency and the

agency, trust, fund, or entity to which quarterly payments are made pursuant to subdivision (b) an audited annual certification of its Net Win calculation from the operation of Gaming Devices. The audit shall be conducted in accordance with generally accepted auditing standards, as applied to audits for the gaming industry, by an independent certified public accountant who is not employed by the Tribe, the Tribal Gaming Agency, the Management Contractor, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits or independent audits of the Gaming Operation, and has no financial interest in any of these entities. The auditor used by the Tribe for this purpose shall be approved by the State Gaming Agency, or other State Designated Agency, but the State shall not unreasonably withhold its consent.

- (2) If the audit shows that the Tribe made an overpayment from its Net Win to the State during the year covered by the audit, the Tribe's next quarterly payment may be reduced by the amount of the overage. Conversely, if the audit shows that the Tribe made an underpayment to the State during the year covered by the audit, the Tribe's next quarterly payment shall be increased by the amount owing.
- (3) The State Gaming Agency shall be authorized to confer with the auditor at the conclusion of the audit process and to review all of the independent certified public accountant's work papers and documentation relating to the audit. The Tribal Gaming Agency shall be notified of and provided the opportunity to participate in and attend any such conference or document review.
- (t) The State Gaming Agency may audit the Quarterly Device Base and Net Win calculations specified in subdivision (c). The State Gaming Agency shall have access to all records deemed necessary by the State Gaming Agency to verify the Quarterly Device Base and Net Win calculations, including access to the

Gaming Device accounting systems and server-based systems and software and to the data contained therein. If the State Gaming Agency determines that the Net Win is understated or the deductions overstated, it will promptly notify the Tribe and provide a copy of the audit. The Tribe within twenty (20) days will either accept the difference or provide a reconciliation satisfactory to the State Gaming Agency. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe must immediately pay the amount of the resulting deficiency, plus accrued interest thereon at the rate of one percent (1%) per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less. If the Tribe does not accept the difference but does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under section 13.0. The parties expressly acknowledge that the certifications provided for in subdivision (d) are subject to section 8.4, subdivision (h).

- (g) Notwithstanding anything to the contrary in section 13, any failure of the Tribe to remit the payments referenced in subdivision (a) pursuant to subdivisions (b), (c), (d), (e) and (f) will entitle the State to immediately seek injunctive relief in federal or state court, at the State's election, to compel the payments, plus accrued interest thereon at the rate of one percent (1%) per month, or the maximum rate permitted by State law for delinquent payments owed to the State, whichever is less; and further, the Tribe expressly consents to be sued in either court and waives its right to assert sovereign immunity against the State in any such proceeding. Failure to make timely payment shall be deemed a material breach of this Amended Compact.
- (h) If any portion of the payments under subdivision (a) herein is overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least fifteen (15) business days, and if more than sixty (60) calendar days have passed from the due date, then the

Tribe shall cease operating all of its Gaming Devices until full payment is made.

- (i) This section constitutes “Section 4.3.1” within the meaning of article 6.5 (commencing with section 63048.6) of Chapter 2 of Division 1 of Title 6.7 of the California Government Code.

## **SECTION 5.0. REVENUE SHARING WITH NON-GAMING AND LIMITED-GAMING TRIBES.**

**Sec. 5.1. Definitions.** For purposes of this section 5.0, the following definitions apply:

- (a) The “Revenue Sharing Trust Fund” is a fund created by the Legislature and administered by the State Gaming Agency, as limited trustee, with no duties or obligations hereunder except for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes. The State Gaming Agency shall allocate and disburse the Revenue Sharing Trust Fund monies on a quarterly basis as specified by the Legislature. Each eligible Non-Gaming Tribe and Limited-Gaming Tribe in the State shall receive the sum of one million one hundred thousand dollars (\$1,100,000) per year from the Revenue Sharing Trust Fund. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay one million one hundred thousand dollars (\$1,100,000) per year to each eligible Non-Gaming Tribe and Limited-Gaming Tribe, any available monies in that fund shall be distributed to eligible Non-Gaming Tribes and Limited-Gaming Tribes in equal shares. Monies in excess of the amount necessary to distribute one million one hundred thousand dollars (\$1,100,000) to each eligible Non-Gaming Tribe and Limited-Gaming Tribe shall remain in the Revenue Sharing Trust Fund available for disbursement in future years. In no event shall the State's general fund be obligated to make up any shortfall in the Revenue Sharing Trust Fund or to pay any unpaid claims connected therewith, and, notwithstanding any provision of law, including any existing provision of law implementing the State Gaming Agency’s obligations related to

the Revenue Sharing Trust Fund under any Class III Gaming compact, Non-Gaming Tribes and Limited-Gaming Tribes are not third party beneficiaries of this Amended Compact and shall have no right to seek any judicial order compelling disbursement of any Revenue Sharing Trust Fund monies to them.

- (b) The “Tribal Nation Grant Fund” is a fund created by the Legislature to make discretionary distribution of funds to Non-Gaming Tribes and Limited-Gaming Tribes upon application of such tribes for purposes related to effective self-governance, self-determined community, and economic development. The fiscal operations of the Tribal Nation Grant Fund are administered by the State Gaming Agency, which acts as limited trustee, with no duties or obligations hereunder except for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes, as those payments are directed by a State Designated Agency. The State Gaming Agency shall allocate and disburse the Tribal Nation Grant Fund monies as specified by a State Designated Agency to one or more eligible Non-Gaming and Limited-Gaming Tribes upon a competitive application basis. The State Gaming Agency shall exercise no discretion or control over, nor bear any responsibility arising from, the recipient tribes’ use or disbursement of Tribal Nation Grant Fund monies. The State Designated Agency shall perform any necessary audits to ensure that monies awarded to any tribe are being used in accordance with their disbursement in relation to the purpose of the Tribal Nation Grant Fund. In no event shall the State's general fund be obligated to pay any monies into the Tribal Nation Grant Fund or to pay any unpaid claims connected therewith, and, notwithstanding any provision of law, including any existing provision of law implementing the State’s obligations related to the Tribal Nation Grant Fund or the Revenue Sharing Trust Fund under any Class III Gaming compact, Non-Gaming Tribes and Limited-Gaming Tribes are not third party beneficiaries of this Amended Compact and shall have no right to seek any judicial order compelling disbursement of any Tribal Nation Grant Fund monies to them.

- (c) A “Non-Gaming Tribe” is a federally recognized tribe in California, with or without a tribal-state Class III Gaming compact, that has not engaged in, or offered, class II gaming or Class III Gaming in any location whether within or without California, as of the date of distribution to such tribe from the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund, or during the immediately preceding three hundred sixty-five (365) days.
- (d) A “Limited-Gaming Tribe” is a federally recognized tribe in California that has a Class III Gaming compact with the State but is operating fewer than a combined total of three hundred fifty (350) Gaming Devices in all of its gaming operations wherever located, or does not have a Class III Gaming compact but is engaged in class II gaming, whether within or without California, during the immediately preceding three hundred sixty-five (365) days.

**Sec. 5.2. Payments for the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund.**

- (a) If the Governor makes the determination specified in section 4.2, subdivision (c), the Tribe agrees that it will pay to the State Gaming Agency, for deposit into the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund, for distribution to Non-Gaming and Limited-Gaming Tribes the annual payment due pursuant to the following schedule:

<b>Number of Gaming Devices Operated</b>	<b>Annual Payment</b>
0-350	\$0 per Gaming Device
351-750	\$900 per Gaming Device
751-1250	\$1950 per Gaming Device

- (b) The Tribe shall remit the payments referenced in subdivision (a) to the State Gaming Agency in quarterly payments, which payments shall be due thirty (30) days following the end of each calendar quarter (i.e., by April 30 for the first quarter, July

30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter).

- (c) If any portion of the payments under subdivision (a) herein is overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least fifteen (15) business days, and if more than sixty (60) calendar days have passed from the due date, then the Tribe shall cease operating all of its Gaming Devices until full payment is made.
- (d) All payments made by the Tribe to the State Gaming Agency pursuant to subdivision (a) shall be deposited into the Revenue Sharing Trust Fund and the Tribal Nation Grant Fund in a proportion to be determined by the Legislature.
- (e) Prior to the Governor making the determination specified in section 4.2, subdivision (c), the Tribe shall continue to make payments to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund the revenue contributions set forth in section 5.2, subdivision (a) of the 2004 Compact, which are: If the Tribe earns over fifty million dollars (\$50,000,000) in Net Win from its Gaming Devices in any given calendar year, the Tribe agrees that it will pay into the Revenue Sharing Trust Fund on January 30 of the following year for distribution on an equal basis to only the Non-Gaming Tribes the following amounts:

<b>Number of Gaming Devices Operated</b>	<b>Annual Payment</b>
1100-2000	\$900 per Gaming Device

## **SECTION 6.0. LICENSING.**

### **Sec. 6.1. Gaming Ordinance and Regulations.**

- (a) All Gaming Activities conducted under this Amended Compact shall, at a minimum, comply (i) with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, (ii) with all rules, regulations, procedures, specifications, and standards duly adopted by the NIGC, the Tribal Gaming Agency, and the State Gaming Agency, and (iii) the provisions of this Amended Compact.
- (b) The Tribal Gaming Agency shall transmit a copy of the Tribal Gaming Ordinance, and all of its rules, regulations, procedures, specifications, ordinances, or standards applicable to the Gaming Activities and Gaming Operations, to the State Gaming Agency within twenty (20) days following execution of this Amended Compact, or within twenty (20) days following their adoption or amendment, whichever is later.
- (c) A copy of those documents identified in subdivision (b) which are applicable to the public shall be made available by the Tribe and the Tribal Gaming Agency to any member of the public upon request.

**Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation.** The Gaming Operations authorized under this Amended Compact shall be owned solely by the Tribe.

### **Sec. 6.3. Prohibitions Regarding Minors.**

- (a) The Tribe shall prohibit persons under the age of twenty-one (21) years from being present in any room or area in which Gaming Activities are being conducted unless the person is en route to a non-gaming area of the Gaming Facility.
- (b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of twenty-one (21) years from purchasing, consuming, or

possessing alcoholic beverages. The Tribe shall also prohibit persons under the age of twenty-one (21) years from being present in any room or area in which alcoholic beverages may be consumed, except to the extent permitted by the State Department of Alcoholic Beverage Control for other commercial establishments serving alcohol.

#### **Sec. 6.4. Licensing Requirements and Procedures.**

**Sec. 6.4.1. Summary of Licensing Principles.** All persons in any way connected with a Gaming Operation or Gaming Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Amended Compact, including, without limitation, all Gaming Employees, Gaming Resource Suppliers, Financial Sources, and any other person having a significant influence over the Gaming Operation, must be licensed by the Tribal Gaming Agency and cannot have had any determination of suitability denied or revoked by the State Gaming Agency. The parties intend that the licensing process provided for in this Amended Compact shall involve joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

#### **Sec. 6.4.2. Gaming Facility.**

- (a) The Gaming Facility or Facilities authorized by this Amended Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Amended Compact, the Tribal Gaming Ordinance, IGRA, and any applicable regulations adopted by the NIGC. The license shall be reviewed and renewed every year thereafter. Verification that this requirement has been met shall be provided by the Tribe to the State by sending a copy of the initial license and each renewal license to the California Gambling Control Commission and any State Designated Agency within twenty (20) days after issuance of the license or renewal. The Tribal Gaming Agency's certification that the Gaming Facility is being operated in conformity with these requirements shall be posted in a conspicuous and public place in the Gaming Facility at all times.

- (b) In order to assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall require the Gaming Facility, and any expansions or modifications of such Gaming Facility, to meet or exceed the Applicable Codes; provided that the Tribe need not meet any standard that specifically applies in name or in fact solely to tribal gaming facilities. In order to assure compliance with the Applicable Codes, in all cases where the Applicable Codes would otherwise require a permit for non-tribal construction, the Tribe, for any Gaming Facility, or any expansions or modifications thereof, shall require inspections to assess compliance, and in that connection, shall (i) employ appropriate plan checkers or review firms that are either California licensed architects or engineers with relevant experience or are on the list, if any, of approved plan checkers or review firms provided by the County of Mendocino, and(ii) employ project inspectors that are currently either certified as Class 1 inspectors by the Division of the State Architect or as Class A inspectors by the Office of Statewide Health Planning and Development or their successors. The Tribe shall require all inspectors to report in writing any failure to comply with the Applicable Codes to both the Tribal Gaming Agency and the State Designated Agency. The plan checkers, review firms, and project inspectors shall hereinafter be referred to as “Inspector(s).” Without limiting the rights of the State under this section, reference to Applicable Codes is not intended to confer jurisdiction upon the State or Mendocino County.
- (c) The State Designated Agency may designate an agent or agents to be given reasonable notice of each inspection by an Inspector required by section 108 of the California Building Code, and the State agents may accompany the Inspector on any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in an inspection that does not meet Applicable Codes (hereinafter “deficiency”). Upon not fewer than three (3) business days’ notice to the Tribal Gaming Agency, except in circumstances posing an immediate threat to the life or safety of any person, in which case no advance notice is required, the

State Designated Agency shall also have the right to conduct an independent inspection of the Gaming Facility to verify compliance with the Applicable Codes before public occupancy and shall report to the Tribal Gaming Agency any alleged deficiency; provided, however, that concurrent with any exercise by the State of its right to inspect without advance notice based upon alleged circumstances posing an immediate threat to the life or safety of any person, the State Designated Agency shall provide to the Tribal Gaming Agency notice in writing specifying in reasonable detail those alleged circumstances.

- (d) In order to make the State Designated Agency's inspections meaningful, in all cases where the Applicable Codes would otherwise require a plan check for non-tribal construction, the Tribe shall require those responsible for the construction of any Gaming Facility, or any expansion or modification thereof, to provide all the documentation as set forth below:
- (1) The Tribe shall cause the design and construction calculations, and plans and specifications (the "Design and Building Plans") that form the basis for the planned Gaming Facility, or any expansion or modification thereof, to be provided to the State Designated Agency within fifteen (15) days of their final plan check and approval;
  - (2) In the event that material changes to a structural detail of the Design and Building Plans will result from contract change orders or any other changes in the Design and Building Plans, the Tribe shall provide such change orders or other changes to the State Designated Agency within five (5) days of the change's execution or approval;
  - (3) The Tribe shall maintain during construction all other contract change orders for inspection and copying by the State Designated Agency upon its request; and

- (4) The Tribe shall maintain the Design and Building Plans for the term of this Amended Compact.
- (e) Any Gaming Facility authorized by this Amended Compact shall be issued a certificate of occupancy by the Tribal Gaming Agency prior to occupancy upon final certification by the Inspector that a Gaming Facility meets the Applicable Codes. The Tribal Gaming Agency shall forward the Inspector's certification to the State Designated Agency within ten(10) days of issuance. If the State Designated Agency objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State Designated Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of section 13.0.
- (f) Any failure to remedy within a reasonable period of time any material and timely raised deficiency shall be deemed a violation of this Amended Compact, and furthermore, any deficiency that poses a serious or significant risk to the health or safety of any occupants shall be grounds for the Tribal Gaming Agency, or the State Designated Agency pursuant to a court order, to prohibit occupancy of the affected portion of the Gaming Facility until the deficiency is corrected.
- (g) On an annual basis following the date of issuance of the certificate of occupancy, the Tribal Gaming Agency shall review the Gaming Facility's continuing compliance with the Applicable Codes by having the Inspectors examine, at the Tribe's expense, all aspects of the Gaming Facility. The Tribe shall not allow occupancy of any portion of a Gaming Facility that is constructed or maintained in a manner that endangers the health or safety of occupants.
- (h) The Tribe shall also take all necessary steps to reasonably ensure ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility, and reasonably ensure the Gaming Facility satisfies all requirements of Title 19

of the California Code of Regulations applicable to similar facilities in Mendocino County asset forth below:

- (1) Not less than thirty (30) days before the commencement of the Gaming Activities, and not less than biennially thereafter, and upon at least ten (10) days' notice to the State Designated Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by a Tribal official, if any, who is responsible for fire protection on the reservation or by an independent expert for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety.
- (2) The State Designated Agency shall be entitled to designate and have a qualified representative present during the inspection. During such inspection, the State's representative shall specify to the Tribal official or independent expert, as the case may be, any condition which the representative reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire and life safety.
- (3) The Tribal official or independent expert shall issue a report on the inspection to the Tribal Gaming Agency and State Designated Agency within fifteen (15) days, identifying any deficiency in fire or life safety at the Gaming Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility.
- (4) Within fifteen (15) days after the issuance of the report, the official or independent expert shall also require and approve a specific plan for correcting deficiencies, whether in fire safety at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including those identified by the State Designated Agency's representatives. A copy of the report shall be served on

the State Designated Agency and the Tribal Gaming Agency.

- (5) Immediately upon correction of all deficiencies identified in the report, the official or independent expert shall certify in writing to the Tribal Gaming Agency and the State Designated Agency that all deficiencies have been corrected.
- (6) Any failure to correct all deficiencies identified in the report within a reasonable period of time shall be deemed a violation of this Amended Compact, and any failure to promptly correct those deficiencies that pose a serious or significant risk to the health and safety of any occupants shall be a violation of this Amended Compact and grounds by the Tribal Gaming Agency, or the State Gaming Agency pursuant to court order, to prohibit occupancy of the affected portion of the Gaming Facility until the deficiency is corrected.

#### **Sec. 6.4.3. Gaming Employees.**

- (a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, and except as otherwise provided by regulations adopted by the California Gambling Control Commission, or its successor in interest, a State Gaming Agency determination of suitability, which license and determination shall be subject to biennial renewal; provided that in accordance with section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process and the State Gaming Agency determination of suitability.
- (b) The Tribe shall not employ, or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability, or for a renewal of such a determination, has been denied or has expired without renewal.

#### **Sec. 6.4.4. Gaming Resource Suppliers.**

- (a) Every Gaming Resource Supplier shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility. Every Gaming Resource Supplier shall also apply to the State Gaming Agency for a determination of suitability at least thirty (30) days prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Gaming Facility. Where the State Gaming Agency denies or revokes a determination of suitability, the Tribal Gaming Agency shall deny or revoke the license. The license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. For purposes of section 6.5.2, such a review shall be deemed to constitute an application for renewal. In connection with such a review, the Tribal Gaming Agency shall require the Gaming Resource Supplier to update all information provided in the previous application.
- (b) Any agreement between the Tribe and a Gaming Resource Supplier shall include a provision for its termination without further liability on the part of the Tribe, except for the bona fide payment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or non-renewal of the Gaming Resource Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments to a Gaming Resource Supplier pursuant to, any contract or agreement for the provision of Gaming Resources with any person or entity whose application to the State Gaming Agency for a determination of suitability has been denied or revoked or whose determination of suitability has expired without renewal.

#### **Sec. 6.4.5. Financial Sources.**

- (a) Subject to subdivision (e) of this section 6.4.5, every Financial Source shall be licensed by the Tribal Gaming Agency prior to extending any financing in connection with the Gaming Operation or a Gaming Facility. Every Financial Source shall also apply to the State Gaming Agency for a determination of suitability at least ninety(90) days prior to extending any financing in connection with the Gaming Operation or Gaming Facility. Where the State Gaming Agency denies the determination of suitability, the Tribal Gaming Agency shall deny, revoke, or not renew the license.
- (b) The license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. For purposes of section 6.5.2, such a review shall be deemed to constitute an application for renewal. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application.
- (c) Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments to a Financial Source pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or revoked or whose determination of suitability has expired without renewal.
- (d) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale, or lease of Gaming Resources obtained from that Gaming Resource Supplier may be licensed solely in accordance with the

licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this section.

- (e) (1) The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section, the Financial Sources under the circumstances stated:
  - (A) A federally-regulated or state-regulated bank, savings and loan association, or other federally- or state-regulated lending institution.
  - (B) An entity described in the California Gambling Control Commission's Uniform Tribal Gaming Regulation CGCC-2, subdivision(f) (as in effect on the date the parties execute this Amended Compact), when that entity is a Financial Source solely by reason of being (i) a purchaser or a holder of debt securities issued directly or indirectly by the Tribe for a Gaming Facility or for the Gaming Operation or (ii) the owner of a participation interest in any amount of indebtedness for which a Financial Source described in subdivision (e)(1)(A) is the creditor.
  - (C) An investor who, alone or together with any persons controlling, controlled by or under common control with such investor, holds less than ten percent (10%) of all outstanding debt securities issued directly or indirectly by the Tribe for a Gaming Facility or for the Gaming Operation.
  - (D) An agency of the federal, state or local government providing financing, together with any person purchasing any debt securities of the agency to provide such financing.
- (2) The following are not Financial Sources for purposes of this section.

- (A) An entity described in the California Gambling Control Commission's Uniform Tribal Gaming Regulation CGCC-2, subdivision(h) (as in effect on the date the parties execute this Amended Compact).
  - (B) A person or entity whose sole connection with a provision or extension of financing to the Tribe is to provide loan brokerage or debt servicing for a Financial Source at no cost to the Tribe or the Gaming Operation, provided that no portion of any financing provided is an extension of credit to the Tribe or the Gaming Operation by that person or entity.
- (f) In recognition of changing financial circumstances, this section shall be subject to good faith renegotiation by both parties in or after five(5) years from the effective date of this Amended Compact upon the request of either party; provided such renegotiation shall not retroactively affect transactions that have already taken place where the Financial Source has been excluded or exempted from licensing requirements.

**Sec. 6.4.6. Processing Tribal Gaming License Applications.**

- (a) Each Applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency.
- (b) At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including Part 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees.
- (c) For Applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its

officers and directors;(ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than ten percent (10%) of the shares of the corporation, if a corporation; and (v) each person or entity (other than a Financial Source that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any Gaming Operation or gaming authorized under this Amended Compact, if that person or entity provided more than ten percent (10%) of either the start-up capital or the operating capital, or of a combination thereof, over a twelve (12)-month period. For purposes of this subdivision, where there is any commonality of the characteristics identified in clauses (i) to (v), inclusive, between any two or more entities, those entities maybe deemed to be a single entity.

- (d) Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

#### **Sec. 6.4.7. Suitability Standard Regarding Gaming Licenses.**

- (a) In reviewing an application for a tribal gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe's Gaming Operations are free from criminal and dishonest elements and would be conducted honestly.
- (b) A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the Applicant, and in the case of an entity, each individual identified in section 6.4.6, meets all the following requirements:

- (1) The person is of good character, honesty, and integrity.
- (2) The person's prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming, or in the carrying on of business and financial arrangements incidental thereto.
- (3) The person is in all other respects qualified to be licensed as provided in, and meets the criteria established in, this Amended Compact, IGRA, NIGC regulations, the Tribal Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe; provided, however, an Applicant shall not be found to be unsuitable solely on the ground that the Applicant was an employee of the Tribe's Shodakai Casino operation in California prior to the effective date of the 2004 Compact.

**Sec. 6.4.8. Background Investigations of Applicants.**

- (a) The Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the Applicant is qualified for a gaming license under the standards set forth in section 6.4.7 and to fulfill all requirements for licensing under IGRA, the Tribal Gaming Ordinance, and this Amended Compact. The Tribal Gaming Agency shall not issue a gaming license, other than a temporary license pursuant to section 6.4.9, until a determination is made that those qualifications have been met.
- (b) In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribal Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a State determination of suitability previously issued under a Class III Gaming compact involving another tribe and the State, or may rely on a State

Gaming Agency license previously issued to the Applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligations.

- (c) An Applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the Applicant. The State Gaming Agency shall cooperate in furnishing to the Tribal Gaming Agency that information, unless doing so would violate state or federal law, would violate any agreement the State Gaming Agency has with a source of the information other than the Applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential.
- (d) If the Tribe adopts an ordinance confirming that Article 6(commencing with section 11140) of Chapter 1 of Title 1 of Part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this section, the Tribal Gaming Agency may be considered to be an entity entitled to receive state summary criminal history information within the meaning of subdivision (b)(12) of section 11105 of the California Penal Code. In that case, the California Department of Justice may provide services to the Tribal Gaming Agency through the California Law Enforcement Telecommunications System (CLETS), subject to a determination by the CLETS advisory committee that the Tribal Gaming Agency is qualified for receipt of such services, and on such terms and conditions as are deemed reasonable by that advisory committee.

**Sec. 6.4.9. Temporary Licensing of Gaming Employees.**

- (a) If the Applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has

conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the Applicant has a criminal history or other information in his or her background that would either automatically disqualify the Applicant from obtaining a tribal gaming license or cause a reasonable person to investigate further before issuing a license, or that the Applicant is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a temporary tribal gaming license and may impose such specific conditions thereon pending completion of the Applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine.

- (b) Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary tribal gaming license.
- (c) A temporary tribal gaming license shall remain in effect until suspended or revoked, or a final determination is made on the application.
- (d) At any time after issuance of a temporary tribal gaming license, the Tribal Gaming Agency shall or may, as the case may be, suspend or revoke it in accordance with the provisions of sections 6.5.1 or 6.5.5, and the State Gaming Agency may request suspension or revocation.
- (e) Nothing herein shall be construed to relieve the Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

**Sec. 6.5. Tribal Gaming License Issuance.** Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a tribal gaming license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an Applicant in an opportunity to be licensed, or in a tribal gaming license itself, both of which shall be considered to be privileges granted to the Applicant in the sole discretion of the Tribal Gaming Agency.

**Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses.**

- (a) Any Applicant's application for a tribal gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the Applicant is determined to be unsuitable or otherwise unqualified for a tribal gaming license.
- (b) Pending consideration of revocation, the Tribal Gaming Agency may suspend a tribal gaming license in accordance with section 6.5.5.
- (c) All rights to notice and hearing shall be governed by tribal law, as to which the Applicant shall be notified in writing along with notice of any intent to suspend or revoke the tribal gaming license.
- (d) Notwithstanding anything to the contrary herein, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall deny that person a tribal gaming license and promptly revoke any tribal gaming license that has theretofore been issued to that person; provided that the Tribal Gaming Agency may, in its discretion, re-issue a tribal gaming license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Code of Civil Procedure.

**Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation.**

- (a) The term of a tribal gaming license shall not exceed two (2) years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data

previously submitted or which is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an additional background investigation maybe required at any time if the Tribal Gaming Agency determines the need for further information concerning the Applicant's continuing suitability or eligibility for a license.

- (b) Prior to renewing a license, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in connection with the application for renewal of the tribal gaming license for purposes of the State Gaming Agency's consideration of renewal of its determination of suitability.
- (c) At the discretion of the State Gaming Agency, an additional background investigation may be required if the State Gaming Agency determines the need for further information concerning the Applicant's continuing suitability for a license.

**Sec. 6.5.3. Identification Cards.**

- (a) The Tribal Gaming Agency shall require that all persons who are required to be licensed wear, in plain view at chest height at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency.
- (b) Identification badges must display information, including, without limitation, a photograph and the person's name, which is adequate to enable members of the public and agents of the Tribal Gaming Agency to readily identify the person and determine the validity and date of expiration of his or her license.
- (c) The Tribe shall monthly provide the State Gaming Agency with the name, badge identification number (if any), and job title of all Gaming Employees.

**Sec. 6.5.4. Fees for Tribal Gaming License.** The fees for all tribal gaming licenses shall be set by the Tribal Gaming Agency.

**Sec. 6.5.5. Suspension of Tribal Gaming License.** The Tribal Gaming Agency shall summarily suspend the tribal gaming license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person could constitute a threat to the public health or safety or may summarily suspend the license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person may violate the Tribal Gaming Agency's licensing or other standards. Any right to notice or hearing in regard thereto shall be governed by Tribal law.

**Sec. 6.5.6. State Determination of Suitability Process.**

- (a) The State Gaming Agency and the Tribal Gaming Agency (together with tribal gaming agencies under other gaming compacts) shall cooperate in developing standard licensing forms for tribal Gaming Employee license applications, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof. To facilitate the State Gaming Agency's ability to obtain any criminal information that may relate to the Applicant, each application form shall be printed showing the State Gaming Agency's approval of its use.
- (b) With respect to Gaming Employees, upon receipt of an Applicant's completed license application and a determination to issue either a temporary or permanent license, the Tribal Gaming Agency shall transmit to the State Gaming Agency for a determination of suitability for licensure under the California Gambling Control Act a notice of intent to license the Applicant, together with all of the following:
  - (1) A copy of all tribal license application materials and information received by the Tribal Gaming Agency from the Applicant.
  - (2) A complete set of fingerprint impressions, rolled by a certified fingerprint roller, transmitted electronically.

- (3) A current photograph.
- (4) Except to the extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency.
- (c) Upon receipt of a written request from a Gaming Resource Supplier or a Financial Source for a determination of suitability, the State Gaming Agency shall transmit an application package to the Applicant to be completed and returned to the State Gaming Agency for purposes of allowing it to make a determination of suitability for licensure.
- (d) Investigation and disposition of applications for a determination of suitability shall be governed entirely by state law, and the State Gaming Agency shall determine whether the Applicant would be found suitable for licensure in a gambling establishment subject to the State Gaming Agency's jurisdiction. Additional information may be required by the State Gaming Agency to assist it in its background investigation.
- (e) A determination of suitability is valid for the term of the tribal license held by the Applicant, and the Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability by the State Gaming Agency at such time as the licensee applies for renewal of a tribal gaming license.
- (f) Upon receipt of completed license or license renewal application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the Applicant is suitable to be licensed for association with Class III Gaming operations. While the Tribal Gaming Agency shall ordinarily be the primary source of application information, the State Gaming Agency is authorized to directly seek application information from the Applicant. If further investigation is required to supplement the investigation conducted by the

Tribal Gaming Agency, the Applicant will be required to pay the application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19951, subdivision (a), as may be amended from time to time, but any deposit requested by the State Gaming Agency pursuant to section 19867 of that Code, as may be amended from time to time, shall take into account reports of the background investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to provide information reasonably required by the State Gaming Agency to complete its investigation under state law or failure to pay the application fee or deposit may be grounds for denial of the application by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs.

- (g) Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State has determined that the Applicant is suitable, or that the Applicant is unsuitable, for licensure in a Gaming Operation and, if unsuitable, stating the reasons therefor.
- (h) Prior to denying an application for a determination of suitability, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard. If the State Gaming Agency denies an application for a determination of suitability, the State Gaming Agency shall provide the Applicant with written notice of all appeal rights available under state law.
- (i) The State Gaming Agency shall maintain a roster of Gaming Resource Suppliers that it has determined to be suitable pursuant to the provisions of this section, or through separate procedures to be adopted by the State Gaming Agency. Upon application to the Tribal Gaming Agency for a tribal gaming license, a Gaming Resource Supplier that appears on the State

Gaming Agency's suitability roster may be licensed by the Tribal Gaming Agency, subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier is not suitable or to a tribal gaming license suspension or revocation pursuant to section 6.5.1.

## **SECTION 7.0. APPROVAL AND TESTING OF GAMING DEVICES.**

### **Sec. 7.1. Gaming Device Approval.**

- (a) No Gaming Device may be offered for play unless all the following occurs:
  - (1) The manufacturer or distributor which sells, leases, or distributes such Gaming Device (i) has applied for a determination of suitability by the State Gaming Agency at least fifteen (15) days before it is offered for play, (ii) has not been found to be unsuitable by the State Gaming Agency, and (iii) has been licensed by the Tribal Gaming Agency;
  - (2) The software for the game authorized for play on the Gaming Device has been tested, approved and certified by an independent gaming test laboratory or state governmental gaming test laboratory (the "Gaming Test Laboratory") as operating in accordance with the standards of Gaming Laboratories International, Inc. known as GLI-11, GLI-12, GLI-13, GLI-21, and GLI-26, or the technical standards approved by the State of Nevada, or such other technical standards as the State Gaming Agency and the Tribal Gaming Agency shall agree upon;
  - (3) A copy of the certification provided by the Gaming Test Laboratory, specified in subdivision (a)(2) is provided to the State Gaming Agency by electronic transmission or by mail;

- (4) The software for the game authorized for play on the Gaming Device is tested by the Tribal Gaming Agency to ensure each game authorized for play on the Gaming Device has the correct electronic signature prior to insertion into the Gaming Device; and
  - (5) The hardware and associated equipment for each type of Gaming Device has been tested by the Gaming Test Laboratory prior to operation by the public to ensure operation in accordance with the applicable Gaming Test Laboratory standards.
- (b) Where either the Tribe or the State Gaming Agency requests new standards for testing, approval, and certification of the software for the game authorized for play on the Gaming Device pursuant to subdivision (a)(2), and the State Gaming Agency and the Tribe fail to agree to new standards within one hundred twenty (120) days of the request, the technical standards shall be those approved by the State of Nevada.

**Sec. 7.2. Gaming Test Laboratory Selection.**

- (a) The Gaming Test Laboratory shall be selected as follows: The Tribal Gaming Agency shall propose to the State Gaming Agency, with supporting documentation, a Gaming Test Laboratory, which (i) is competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (ii) is licensed or approved by any of the following states: Arizona, California, Colorado, Illinois, Indiana, Iowa, Michigan, Missouri, Nevada, New Jersey, Wisconsin, or any other state agreed in writing by the Tribal Gaming Agency and the State Gaming Agency.
- (b) The selection of the Gaming Test Laboratory is subject to the consent of the State Gaming Agency, but the State Gaming Agency shall not unreasonably withhold its consent, except that no such Gaming Test Laboratory may be used if it is determined to be unsuitable by the State Gaming Agency.

- (c) If, at any time, any of the Gaming Test Laboratory's licenses are suspended, terminated, or subject to disciplinary action, upon notice by the Tribal Gaming Agency or the State Gaming Agency of that fact, the Tribal Gaming Agency shall ensure that such Gaming Test Laboratory discontinues its responsibilities under section 7.0 herein, and the Tribe shall propose a new Gaming Test Laboratory pursuant to the provisions of this section.

**Sec. 7.3. Independent Audits.** The Tribal Gaming Agency shall ensure that compliance with section 7.1 is audited annually by an independent auditor and shall provide the results of such audits to the State Gaming Agency within five (5) business days of completion. For purposes of this section, an independent auditor shall be a certified public accountant and/or certified internal auditor who is not employed by the Tribe, the Tribal Gaming Agency, or the Gaming Operation and has no financial interest in any of these entities, and is only otherwise retained by any of these entities to conduct regulatory audits or audits under this section.

**Sec. 7.4. State Gaming Agency Inspections.**

- (a) The State Gaming Agency, utilizing such consultants, if any, it deems appropriate, may inspect the Gaming Devices on a random basis not to exceed four (4) times annually to confirm that they operate and play properly pursuant to the manufacturer's technical standards and industry standards.
- (b) The State Gaming Agency shall provide notice to the Tribal Gaming Agency of such inspection at or prior to the commencement of the random inspection.
- (c) The State Gaming Agency, utilizing such consultants, if any, it deems appropriate, may conduct additional inspections at additional times upon reasonable belief of any irregularity and after informing the Tribal Gaming Agency of the basis for such belief.
- (d) The Tribe and the State Gaming Agency shall inform the Gaming Test Laboratory in writing that irrespective of the

source of payment of its fees, the Gaming Test Laboratory's duty of loyalty runs equally to the State and the Tribe.

**Sec. 7.5. Technical Standards.** The Tribal Gaming Agency shall provide to the State Gaming Agency copies of its regulations for technical standards applicable to the Tribe's Gaming Devices within thirty (30) days after this Amended Compact becomes effective and at least thirty (30) days before the effective date of any revisions to the regulations.

**Sec. 7.6. State Gaming Agency Designation.** For purposes of sections 7.1 to 7.5, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to section 16.

**Sec. 7.7. Transportation of Gaming Devices.**

- (a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's land except in accordance with procedures established by agreement between the State Gaming Agency and the Tribal Gaming Agency and upon at least ten (10) days' notice to the Sheriff's Department in Mendocino County.
- (b) Transportation of a Gaming Device from a Gaming Facility within California is permissible only if:
  - (1) The final destination of the Gaming Device is a gaming facility of any tribe in California that has a compact with the State which makes lawful the receipt of such Gaming Device;
  - (2) The final destination of the Gaming Device is any other state in which possession of the Gaming Device is made lawful by state law or by tribal-state compact;
  - (3) The final destination of the Gaming Device is another country, or any state or province of another country, wherein possession of the Gaming Device is lawful; or

- (4) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Gaming Agency.
- (c) Any Gaming Device transported to or from the Tribe's land in violation of this section 7.7, or in violation of any permit issued pursuant thereto, is subject to summary seizure by California peace officers.

## **SECTION 8.0. INSPECTIONS.**

### **Sec. 8.1. Investigation and Sanctions.**

- (a) The Tribal Gaming Agency shall investigate any reported violation of this Amended Compact and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary.
- (b) The Tribal Gaming Agency shall be empowered by the Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees or other persons who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, NIGC gaming regulations, the Tribal Gaming Ordinance, or this Amended Compact as long as said fines or sanctions comport with principles of federal due process.
- (c) The Tribal Gaming Agency shall report violations of this Amended Compact and any failures to comply with its orders to the California Gambling Control Commission and the Bureau of Gambling Control in the California Department of Justice, or their successor agencies within the State Gaming Agency, within ten (10) days of discovery.

**Sec. 8.2. Assistance by State Gaming Agency.** The Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in section 8.1, or otherwise to protect public health, safety, or welfare.

**Sec. 8.3. Access to Premises by State Gaming Agency; Notification; Inspections.**

- (a) Notwithstanding that the Tribe and its Tribal Gaming Agency have the primary responsibility to administer and enforce the regulatory requirements of this Amended Compact, the State Gaming Agency, including, without limitation, any consultants retained by it, shall have the right to inspect the Gaming Facility, and all Gaming Operation or Gaming Facility records relating to Class III Gaming, including such records located in off-site facilities dedicated to their storage subject to the conditions in subdivisions (b), (c), and (d).
- (b) Except as provided in section 7.4, the State Gaming Agency may inspect public areas of the Gaming Facility at any time without prior notice during normal Gaming Facility business hours.
- (c) Inspection of areas of the Gaming Facility not normally accessible to the public may be made at any time the Gaming Facility is open to the public, immediately after the State Gaming Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. The Tribal Gaming Agency, in its sole discretion, may require a member of the Tribal Gaming Agency to accompany the State Gaming Agency inspector at all times that the State Gaming Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member to be available at all times for those purposes and shall ensure that the member has the ability to gain immediate access to all non-public areas of the Gaming Facility.

- (d) Nothing in this Amended Compact shall be construed to limit the State Gaming Agency to one inspector during inspections.

**Sec. 8.4. Inspection, Copying and Confidentiality of Documents.**

- (a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time, immediately after the State Gaming Agency gives notice to the Tribal Gaming Agency, during the hours from 8:00 a.m. to 5:00 p.m. Monday through Friday, and at any other time that a Tribal Gaming Agency employee, a Gaming Facility employee, or a Gaming Operation employee is available onsite with physical access to offices, including off-site facilities, where the papers, books, and records are kept. The Tribe shall cooperate with, and cannot refuse, said inspection and copying, provided that the State Gaming Agency inspectors cannot require copies of papers, books, or records in such volume that it unreasonably interferes with the normal functioning of the Gaming Operation or Facility.
- (b) In lieu of onsite inspection and copying of Gaming Operation papers, books, and records by its inspectors, the State Gaming Agency may request in writing that the Tribal Gaming Agency provide copies of such papers, books, and records as the State Gaming Agency deems necessary to ensure compliance with the terms of this Amended Compact. The State Gaming Agency's written request shall describe those papers, books, and records requested to be copied with sufficient specificity to reasonably identify the requested documents. Within ten (10) days after it receives the request, or such other time as the State Gaming Agency may agree in writing, the Tribal Gaming Agency shall provide one copy of the requested papers, books, and records to the requesting State Gaming Agency. An electronic version of the requested papers, books, and records may be submitted to the State Gaming Agency in lieu of a paper copy so long as the software required to access the electronic version is reasonably available to the State Gaming Agency and the State Gaming Agency does not object.

- (c) Notwithstanding any other provision of California law, any confidential information and records that the State Gaming Agency obtains or copies pursuant to this Amended Compact shall be, and remain, the property solely of the Tribe; provided that such confidential information and records and copies may be retained by the State Gaming Agency as is reasonably necessary to assure the Tribe's compliance with this Amended Compact or to complete any criminal investigation; and provided further that the State Gaming Agency may provide such confidential information and records and copies to federal law enforcement and other state agencies or consultants that the State deems reasonably necessary in order to assure the Tribe's compliance with this Amended Compact, in order to renegotiate any provision thereof, or in order to conduct or complete any criminal investigation. As used in this section, "confidential information and records" means information treated as confidential or protected from disclosure under California state law to the extent provided under California state law.
- (d) The State Gaming Agency and all other state agencies and consultants to which it provides confidential information and records obtained pursuant to subdivisions (a) or (b) of this section, will exercise the utmost care in the preservation of the confidentiality of any and all confidential information and documents received from the Tribe pursuant to those subdivisions of this section, and will apply the highest standards of confidentiality provided under California state law to preserve such information and records from disclosure to the extent required by California state law.
- (e) The Tribe may avail itself of any and all remedies under state law for the improper disclosure of confidential information and records. In the case of any disclosure of confidential information and records compelled by judicial process, the State Gaming Agency will endeavor to give the Tribe prompt notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.

- (f) The Tribal Gaming Agency and the State Gaming Agency shall confer regarding protocols for the release to law enforcement agencies of information obtained during the course of background investigations.
- (g) Confidential records received by the State Gaming Agency from the Tribe in compliance with this Amended Compact, or information compiled by the State Gaming Agency from those confidential records, shall be exempt from disclosure under the California Public Records Act.
- (h) Notwithstanding any other provision of this Amended Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Amended Compact or to complete a criminal investigation.

## **SECTION 9.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE GAMING OPERATION AND FACILITY.**

**Sec. 9.1. Adoption of Regulations for Operation and Management; Minimum Standards.** It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Amended Compact, of IGRA, of NIGC gaming regulations, of State Gaming Agency regulations, and of the Gaming Ordinance, to protect the integrity of the Gaming Activities and the Gaming Operation for honesty and fairness, and to maintain the confidence of patrons that tribal governmental gaming in California meets the highest standards of fairness and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, rules and regulations governing, at a minimum, the following subjects pursuant to the standards and conditions set forth therein:

- (a) The enforcement of all relevant laws and rules with respect to the Gaming Activities, Gaming Operation and Gaming Facility, and the conduct of investigations and hearings with respect thereto, and to any other subject within its jurisdiction.

- (b) The physical safety of Gaming Facility patrons and employees, and any other person while in the Gaming Facility. Except as provided in section 12.2, nothing herein shall be construed to make applicable to the Tribe any state laws, regulations, or standards governing the use of tobacco.
- (c) The physical safeguarding of assets transported to, within, and from the Gaming Facility.
- (d) The prevention of illegal activity within the Gaming Facility or with regard to the Gaming Operation or Gaming Activities, including, without limitation, the maintenance of employee procedures and a surveillance system as provided in subdivision (e).
- (e) Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated by the Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal Gaming Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Agency.
- (f) The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereinafter "incidents"). The regulations shall provide that the Tribal Gaming Agency shall transmit copies of incident reports to the State Gaming Agency forthwith. The procedure for recording incidents pursuant to the regulations shall also do all of the following:
  - (1) Specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing).

- (2) Require the assignment of a sequential number to each report.
- (3) Provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page and/or in electronic form, provided the information is recorded in a manner so that, once the information is entered, it cannot be deleted or altered and is available to the State Gaming Agency pursuant to sections 8.3 and 8.4.
- (4) Require that each report include, at a minimum, all of the following:
  - (A) The record number.
  - (B) The date.
  - (C) The time.
  - (D) The location of the incident.
  - (E) A detailed description of the incident.
  - (F) The persons involved in the incident.
  - (G) The security department employee assigned to the incident.
- (g) The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.
- (h) Maintenance of a list of persons barred from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the Tribe or to the integrity of regulated gaming within the State. The Tribal Gaming Agency shall transmit a copy of the list to the State Gaming Agency quarterly and shall make a copy of the current list available to the State Gaming Agency upon request. Notwithstanding anything in this Amended Compact to the contrary, the State Gaming Agency is authorized to make the copies of the list available to other tribal gaming agencies, to

licensees of the California Gambling Control Commission, the California Horse Racing Board, and other law enforcement agencies.

- (i) The conduct of an audit, at the Tribe's expense, of the annual financial statements of the Tribe's Gaming Activities pursuant to Section 4.3.1, subdivision (f).
- (j) Submission to, and prior approval by, the Tribal Gaming Agency of the rules and regulations of each Class III game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III game may be played that has not received Tribal Gaming Agency approval.
- (k) The obligation of the Gaming Facility and the Gaming Operation to maintain a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners.
- (l) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations is visibly displayed or available to patrons in written form in the Gaming Facility and to ensure that betting limits applicable to any gaming station is displayed at that gaming station.
- (m) Maintenance of a cashier's cage in accordance with industry standards for such facilities.
- (n) Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.
- (o) Technical standards and specifications in conformity with the requirements of this Amended Compact for the operation of Gaming Devices and other games authorized herein to be conducted by the Tribe.
- (p) Maintenance, at conspicuous locations within the Gaming Facility, of notices to patrons advising them where they may

obtain assistance for gambling problems. The notice may be in the form of either posted notices or pamphlets available to patrons at no cost, or both. The Tribal Gaming Agency shall require that the Gaming Operation implement appropriate procedures by which patrons may voluntarily limit their access to gambling, including restraints on the issuance of credit, check cashing services, and direct mail advertising to such gamblers.

**Sec. 9.1.1. Minimum Internal Control Standards (MICS).**

- (a) The Tribe shall conduct its Gaming Activities pursuant to an internal control system that implements minimum internal control standards for Class III Gaming that are no less stringent than those contained in the Minimum Internal Control Standards of the NIGC (25 C.F.R. Part 542), as they existed on October 19, 2006, and as they may be amended from time to time, without regard to the NIGC's authority to promulgate, enforce, or audit the standards. This requirement is met through compliance with the provisions set forth in this section and in section 9.1.
- (b) Within thirty (30) days after this Amended Compact becomes effective, the Tribal Gaming Agency shall, in accordance with the Gaming Ordinance, establish written internal control standards for the Gaming Facility that shall: (i) provide a level of control that equals or exceeds the minimum internal control standards set forth in Appendix B to this Amended Compact, as it exists currently and as it may be revised; (ii) contain standards for currency transaction reporting that comply with Part 103 of Title 31 of the Code of Federal Regulations, as it exists currently and as it may be amended; (iii) satisfy the requirements of section 9.1; (iv) be consistent with this Amended Compact; and (v) require the Gaming Operation to comply with the internal control standards.
- (c) The Gaming Operation shall operate the Gaming Facility pursuant to a written internal control system. The internal control system shall comply with and implement the internal

control standards established by the Tribal Gaming Agency pursuant to subdivision (b) of this section 9.1.1. The internal control system, and any proposed changes to the system, must be approved by the Tribal Gaming Agency prior to implementation. The internal control system shall be designed to reasonably assure that: (i) assets are safeguarded and accountability over assets is maintained; (ii) liabilities are properly recorded and contingent liabilities are properly disclosed; (iii) financial records including records relating to revenues, expenses, assets, liabilities, and equity/fund balances are accurate and reliable; (iv) transactions are performed in accordance with the Tribal Gaming Agency's general or specific authorization; (v) access to assets is permitted only in accordance with the Tribal Gaming Agency's approved procedures; (vi) recorded accountability for assets is compared with actual assets at frequent intervals and appropriate action is taken with respect to any discrepancies; and (vii) functions, duties and responsibilities are appropriately segregated and performed in accordance with sound practices by qualified personnel.

- (d) The Tribal Gaming Agency shall provide a copy of its written internal control standards and any changes to those control standards to the State Gaming Agency within thirty (30) days of approval by the Tribal Gaming Agency. The State Gaming Agency will review and submit to the Tribal Gaming Agency written comments or objections, if any, to the internal control standards and any changes to the standards, within thirty (30) days of receiving them, or by another date agreed upon by the Tribal Gaming Agency and the State Gaming Agency. The State Gaming Agency's review shall be for the purpose of determining whether the internal control standards and any changes to the standards provide a level of control which equals or exceeds the level of control required by the minimum internal control standards set forth in Appendix B, as it exists currently and as it may be revised, and are consistent with this Amended Compact.

- (e) The minimum internal control standards set forth in Appendix B to this Amended Compact shall apply to all Gaming Activities, Gaming Facilities and the Gaming Operation; however, Appendix B is not applicable to any activities not expressly permitted in this Amended Compact. Should the terms in Appendix B be inconsistent with this Amended Compact, the terms in this Amended Compact shall prevail.
- (f) The Tribal Gaming Agency and the State Gaming Agency shall, every three (3) years after the effective date of this Amended Compact, and not later than thirty (30) days after the three (3)-year period, promptly commence negotiations to amend Appendix B to this Amended Compact to continue efficient regulation, foster statewide uniformity of regulation of class III Gaming Operations, and address future circumstances, including, without limitation, technological advancements and changes in industry standards. The Tribal Gaming Agency or the State Gaming Agency may, at any time, request negotiations to amend Appendix B to this Amended Compact for the purposes described in this subdivision (f). Such revisions to Appendix B shall not be considered to be an amendment to this Amended Compact. Any disputes regarding the contents of future amendments to Appendix B shall be resolved in the manner set forth in section 13.0 of this Amended Compact.
- (g) The Tribe shall cause, at its own expense and not less than annually at the Tribe's fiscal year end, an independent certified public accountant to be engaged to perform "Agreed-Upon Procedures" to verify that the Gaming Operation is in compliance with the internal control standards at each Gaming Facility operated by the Tribe. The independent certified public accountant shall perform the Agreed-Upon Procedures in accordance with Part 542.3, subdivision (f), in Appendix B, as it may be revised. The independent certified public accountant shall issue a report of its findings to the Tribal Gaming Agency within one hundred twenty (120) days after the Gaming Operation's fiscal year end. Promptly upon receipt of the Agreed-Upon Procedures report, and in no event later than

fifteen (15) days after receipt of the report, the Tribal Gaming Agency shall provide a complete copy of the Agreed-Upon Procedures report to the State Gaming Agency, along with a copy of any supporting reports or documents the independent certified public accountant has prepared, and any replies the Tribe has prepared in response to the independent certified public accountant's report.

**Sec. 9.2. Program to Mitigate Problem Gambling.** The Tribal Gaming Agency shall establish a program to mitigate pathological and problem gambling by implementing the following measures:

- (a) It shall train Gaming Facility supervisors and gaming floor employees on responsible gaming and to identify and manage problem gambling.
- (b) It shall make available to patrons at conspicuous locations and ATMs in the Gaming Facility educational and informational materials which aim at the prevention of problem gambling and that specify where to find assistance.
- (c) It shall establish self-exclusion programs whereby a self-identified problem gambler may request the halt of promotional mailings, the revocation of privileges for casino services, the denial or restraint on the issuance of credit and check cashing services, and exclusion from the Gaming Facility.
- (d) It shall establish an involuntary exclusion program that allows the Gaming Operation to halt promotional mailings, deny or restrain the issuance of credit and cash checking services, and deny access to the Gaming Facility to patrons who have exhibited signs of problem gambling.
- (e) It shall display at conspicuous locations and at ATMs within the Gaming Facility signage bearing a toll-free help-line number where patrons may obtain assistance for gambling problems.

- (f) It shall make diligent efforts to prevent underage individuals from loitering in the area of the Gaming Facility where the Gaming Activities take place.
- (g) It shall assure that advertising and marketing of the Gaming Activities at the Gaming Facility contain a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that it make no false or misleading claims.
- (h) It shall adopt a code of conduct, derived, inter alia, from that of the American Gaming Association, that addresses responsible gambling and responsible advertising.

Nothing herein is intended to grant any third party the right to sue based on a perceived violation of these standards.

**Sec. 9.3. Enforcement of Regulations.** The Tribal Gaming Agency shall ensure the enforcement of the rules, regulations, and specifications promulgated under this Amended Compact, including under section 9.1.

**Sec. 9.4. State Civil and Criminal Jurisdiction.** Nothing in this Amended Compact impairs the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) or IGRA to the extent applicable. Except as provided below and in the Tribal Law and Order Act, all state and local law enforcement agencies and state courts shall exercise jurisdiction to enforce the State's criminal laws within the Tribe's Indian lands, including the Gaming Facility and all related structures, in the same manner and to the same extent, and subject to the same restraints and limitations, imposed by the laws of the State and the United States, as is exercised by state and local law enforcement agencies and state courts elsewhere in the State, to the fullest extent permitted by decisions of the United States Supreme Court related to Public Law 280. The Tribe hereby consents to such criminal jurisdiction. However, no Gaming Activity conducted by the Tribe pursuant to this Amended Compact may be deemed to be a criminal violation of any law of the State. Except for such Gaming Activity conducted pursuant to this Amended Compact, criminal jurisdiction to enforce state gambling laws on the Tribe's Indian lands, and to adjudicate

alleged violations thereof, is hereby transferred to the State pursuant to 18 U.S.C. § 1166(d).

**Sec. 9.5. Tribal Gaming Agency Members.**

(a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under this Amended Compact; shall adopt a conflict-of-interest code to that end and shall ensure its enforcement; and shall ensure the prompt removal of any member of the Tribal Gaming Agency who is found to have acted in a corrupt or compromised manner or to have a conflict of interest.

(b) The Tribe shall conduct a background investigation on each prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a management contractor under IGRA; provided that if such member is elected through a tribal election process, that member may not participate in any Tribal Gaming Agency matters under this Amended Compact unless a background investigation has been concluded and the member has been found to be suitable. If requested by the Tribe or the Tribal Gaming Agency, the State Gaming Agency may assist in the conduct of such a background investigation and may assist in the investigation of any possible corruption or compromise of a member of the agency. Upon receipt of notice that the State Gaming Agency has determined any member to be unsuitable, the Tribe shall remove that member from the Tribal Gaming Agency.

**Sec. 9.6. State Gaming Agency Regulations.**

(a) Pursuant to the procedures set forth in section 9.7, the State Gaming Agency may adopt regulations governing matters encompassed in sections 6.0, 7.0 and 9.1 under the following circumstances:

(1) The State Gaming Agency may adopt regulations that apply to any aspect of the Gaming Operation that is not addressed by a regulation of the Tribal Gaming Agency

as long as the regulations are not inconsistent with the terms of this Amended Compact.

- (2) The State Gaming Agency may adopt regulations that apply to any subjects covered by sections 6.0, 7.0 and 9.1, when it deems that the regulations adopted by the Tribal Gaming Agency in connection with the subject are ineffective in addressing it, as long as the regulations are not inconsistent with the terms of this Amended Compact.
- (3) In circumstances that present an imminent threat to public health or safety, the State Gaming Agency may adopt a regulation that becomes effective immediately, regardless of whether the Tribe or Tribal Gaming Agency has enacted a regulation on the subject and regardless of whether the Tribal regulation is deemed ineffective. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Tribal Gaming Agency. A regulation adopted by the State Gaming Agency pursuant to this subdivision shall be subject to the provisions governing arbitration under subdivision (d) of section 9.7.
- (4) Chapter 3.5 (commencing with section 11340) of Part 1 of

Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency under this section.

**Sec. 9.7. Limitations on Adoption of State Gaming Regulations.**

- (a) To promote respectful relations between the Tribe and the State, except as provided in section 9.6, subdivision (a)(3), no State Gaming Agency regulation adopted under section 9.6, subdivisions (a)(1) and (2), shall be effective with respect to the Gaming Operation until all of the following procedures have been exhausted:

- (1) When the State Gaming Agency suspects, with respect to an aspect of the Gaming Operation that no such regulation exists, or that an existing regulation is ineffective in addressing a subject, it may so notify the Tribal Gaming Agency, set forth the reasons for its position, and request a meeting for the purpose of considering the adoption of a regulation by the Tribal Gaming Agency or the State Gaming Agency. The notification shall propose a date for the meeting, which shall not be less than ten(10) days following the date the notification is made.
- (2) Representatives of the Tribal Gaming Agency shall meet with the representatives of the State Gaming Agency (for purposes of this section, the "parties") on the date proposed in the notification, or such other date as may be mutually agreed. In the absence of agreement upon a different date, the date proposed in the notification shall control. The parties at the meeting shall confer in good faith over the necessity for the adoption of a regulation and ways in which effective regulation may be achieved. Any proposal of a regulation by the Tribal Gaming Agency, either at or prior to the meeting, shall be without prejudice to its right to dispute either the necessity of a regulation or the effectiveness of a regulation in existence.
- (3) Within thirty (30) days following the meeting, the Tribal Gaming Agency may propose a regulation for the purpose of addressing the subject as to which the State Gaming Agency provided notification. The Tribal Gaming Agency may adopt the regulation only after inviting comment or objection by the State Gaming Agency, and the Tribal Gaming Agency must provide at least thirty (30) days for the State Gaming Agency to comment or object by providing a copy of the proposed regulation to the State Gaming Agency at least thirty (30) days prior to the date of its intended adoption. Prior to adoption of any regulation under this paragraph, the

Tribal Gaming Agency shall respond in writing to each comment and objection of the State Gaming Agency.

- (4) If the Tribal Gaming Agency adopts a regulation as provided in subdivision (a)(3), the State Gaming Agency may, if dissatisfied with the regulation, make a demand for binding arbitration upon the Tribal Gaming Agency, in which case arbitration shall proceed as provided in subdivision (d).
- (b) If the Tribal Gaming Agency does not propose a regulation within thirty (30) days following the meeting specified in subdivision (a)(2) and adopt a regulation as provided in subdivision (a)(3) within seventy (70) days of the meeting specified in subdivision (a)(2), the State Gaming Agency may adopt a regulation for the purpose of addressing the subject as to which it provided the Tribal Gaming Agency notification pursuant to subdivision (a)(1). Except as provided in section 9.6, subdivision (a)(3), the State Gaming Agency shall adopt no regulation under this subdivision without first providing the proposed regulation to, and inviting comment or objection by, the Tribal Gaming Agency at least thirty (30) days prior to the date of the intended adoption of the regulation. The Tribal Gaming Agency shall provide its comments or objections, if any, to the State Gaming Agency at least ten (10) days prior to the date of the intended adoption of the regulation. Prior to adoption of any regulation under this subdivision, the State Gaming Agency shall respond in writing to each comment and objection of the Tribal Gaming Agency.
- (c) If the State Gaming Agency adopts a regulation as provided in subdivision (b), the Tribal Gaming Agency may, if dissatisfied with the regulation, make a demand upon the State Gaming Agency for binding arbitration, in which case the arbitration shall proceed as provided in subdivision (d).
- (d) Neither a demand for arbitration nor the pendency of arbitration shall impair the effect of a regulation adopted by the Tribal Gaming Agency under subdivision (a)(3) or by the State

Gaming Agency under subdivision (b) of this section or subdivision (a)(3) of section 9.6. Arbitration, when demanded, shall proceed before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Each party shall exchange with the other within fifteen (15) days of the demand for arbitration a single proposal in the form of a regulation that the party proposes to adopt. If either party has adopted a regulation pursuant to subdivisions (a) or (b) of this section or subdivision (a)(3) of section 9.6, that regulation shall constitute the proposal of that party. The arbitrator shall be limited to determining whether the Amended Compact authorizes a regulation to be adopted with respect to the aspect of the Gaming Operation at issue, and if so, which of the proposals before the arbitrator most effectively addresses the subject in light of the purposes and objectives of sections 6.0, 7.0 and 9.1 of this Amended Compact. Unless the arbitrator determines that no regulation is required by the Amended Compact, the arbitrator shall issue an order, effective upon issuance, which shall identify which of the two (2) proposals is to be given effect as a regulation. If requested by a party at the hearing, a reasoned statement of the arbitrator's decision shall be included in the order. Review of the arbitrator's order is waived. To effectuate this provision, and in the exercise of its sovereignty, the Tribe agrees to waive, and does hereby waive, its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the other party's obligation to arbitrate, or (ii) enforce or confirm any arbitral order rendered in the arbitration.

(e) The proposal identified by the arbitrator's order as the proposal

to be given effect shall be effective as follows: If the proposal so identified is in effect on the date the arbitrator's order is issued, it need not be readopted and shall be effective from the date of adoption. If the proposal so identified is not in effect on the date the arbitrator's order is issued, the agency that has not adopted it, be it either the State Gaming Agency, the Tribal Gaming Agency, or both, shall adopt it as a regulation no earlier than thirty (30) days, but no later than sixty (60) days, after the date of the arbitrator's order. Any proposal adopted as

a regulation pursuant to sections 9.6 and 9.7 prior to the arbitrator's order, which is not adopted by the arbitrator pursuant to subdivision (d), shall cease to be effective upon adoption of the proposal identified by the arbitrator's order.

- (f) Nothing in this section 9.7 shall be deemed to preclude either the State or the Tribe from seeking, under section 13.1, a resolution of the question whether a regulation adopted under section 9.0 conflicts with a final published regulation of the NIGC.

**Sec. 9.8. Uniform Tribal Gaming Regulations.** Notwithstanding section 9.6 and section 9.7, the California Gambling Control Commission's Uniform Tribal Gaming Regulations CGCC-1, CGCC-2, and CGCC-7 (as in effect on the date the parties execute this Amended Compact), adopted by the State Gaming Agency and approved by the Association of Tribal and State Gaming Regulators, shall apply to the Gaming Operation until amended or repealed, without further action by the State Gaming Agency, the Tribe, the Tribal Gaming Agency or the Association of Tribal and State Gaming Regulators.

## **SECTION 10.0. PATRON DISPUTES.**

The Tribal Gaming Agency shall promulgate regulations governing patron disputes over the play or operation of any game, including any refusal to pay to a patron any alleged winnings from any Gaming Activities, which regulations must meet the following minimum standards:

- (a) A patron who makes a complaint to personnel of the Gaming Operation over the play or operation of any game within seven (7) days of the play or operation shall be notified in writing of his or her right to request, within fifteen (15) days of the written notification, resolution of the dispute by the Tribal Gaming Agency, and if dissatisfied with the resolution, to seek binding arbitration of the dispute before a retired judge pursuant to the terms and provisions in subdivision (c). If the patron is not provided with the aforesaid notification within thirty (30) days of the patron's complaint, the deadlines herein shall be

removed, leaving only the relevant statutes of limitations under California law that would otherwise apply.

- (b) Upon request by the patron for a resolution of his or her complaint, the Tribal Gaming Agency shall conduct an appropriate investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision in accordance with industry practice extant in Nevada or New Jersey. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.
  
- (c) If the patron is dissatisfied with the decision of the Tribal Gaming Agency, or no decision is issued within the sixty (60) day period, the patron may request that the dispute be settled by binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the Streamlined Arbitration Rules and Procedures of JAMS (or if those rules no longer exist, the closest equivalent). Upon such request, the Tribe shall consent to such arbitration, and agree to abide by the decision of the arbitrator; provided, however, that if any alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure and not due to the intentional acts or gross negligence of the Tribe or its agents, the arbitrator shall deny the patron's claim for the winnings but shall award reimbursement of the amount wagered by the patron which was lost as a result of any said failure. To effectuate its consent to the arbitration, the Tribe shall, in the exercise of its sovereignty, waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the Tribe's or the patron's (for purposes of this section the "parties") obligation to arbitrate, (ii) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon the award. The cost and expenses of such arbitration shall be initially borne by the Tribe, but the arbitrator shall award to the prevailing party its costs and expenses (but not attorney fees). Any party dissatisfied with the award of the arbitrator may at that party's

election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such election must bear all the costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure, regardless of the outcome.

## **SECTION 11.0. OFF-RESERVATION ENVIRONMENTAL AND ECONOMIC IMPACTS.**

**Sec. 11.1. Local Agreements.** Before the commencement of the Gaming Activities under this Amended Compact, the Tribe shall consult with the County of Mendocino and enter into an enforceable written agreement with the County of Mendocino with respect to the matters set forth below:

- (a) Provisions providing for the timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to a Project, as defined in section 2.19, unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.
- (b) Provisions relating to compensation for law enforcement, fire protection, emergency medical services, and any other public services to be provided by the County of Mendocino to the Tribe as a consequence of the Gaming Activities.
- (c) Provisions relating to the mitigation of any effect on public health (including, without limitation, gambling addiction) and public safety attributable to the Gaming Operation, including any compensation to the County of Mendocino as a consequence thereof.

The Tribe will transmit a copy of all written agreements with the County of Mendocino to the State Gaming Agency within thirty (30) days of reaching agreement pursuant to this section or section 11.3.

**Sec. 11.2. Tribal Environmental Impact Report.**

- (a) Before the commencement of any Project as defined in section 2.19, the Tribe shall cause to be prepared a comprehensive and adequate tribal environmental impact report, which is hereinafter referred to as a TEIR, analyzing the potentially significant off-reservation environmental impacts of the Project pursuant to the process set forth in this section 11.0; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Effect(s) on the Off-Reservation Environment which the Project is likely to have, including each of the matters set forth in Appendix C, shall list ways in which the Significant Effects on the Environment might be minimized, and shall include a detailed statement setting forth all of the following:

- (1) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
- (2) All Significant Effects on the Environment of the proposed Project;
- (3) In a separate section:

- (A) Any Significant Effect on the Environment that cannot be avoided if the Project is implemented;
  - (B) Any Significant Effect on the Environment that would be irreversible if the Project is implemented;
- (4) Mitigation measures proposed to minimize Significant Effects on the Environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy;
  - (5) Alternatives to the Project; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Amended Compact on its Indian lands;
  - (6) Whether any proposed mitigation would be feasible;
  - (7) Any direct growth-inducing impacts of the Project; and
  - (8) Whether the proposed mitigation would be effective to substantially reduce the potential Significant Effects on the Environment.
- (b) In addition to the information required pursuant to subdivision
- (a), the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Project on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Off-Reservation Environment, including each of the items on Appendix C, shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion of mitigation measures shall describe feasible measures which could minimize significant adverse effects, and shall distinguish between the measures that are proposed by the Tribe and other measures proposed by others. Where several measures are available to mitigate an effect, each should be

discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. The TEIR shall also describe a range of reasonable alternatives to the Project or to the location of the Project, which would feasibly attain most of the basic objectives of the Project and which would avoid or substantially lessen any of the Significant Effects on the Environment, and evaluate the comparative merits of the alternatives; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Amended Compact on its Indian lands. The TEIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison. The TEIR shall also contain an index or table of contents and a summary, which shall identify each Significant Effect on the Environment with proposed measures and alternatives that would reduce or avoid that effect, and issues to be resolved, including the choice among alternatives and whether and how to mitigate the Significant Effects on the Environment. Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis. The Tribe shall consider any recommendations from the Board of Supervisors of the County of Mendocino concerning the person or entity to prepare the TEIR.

**Sec. 11.2.1. Notice of Preparation of Draft TEIR.**

- (a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a Notice of Preparation to the State Clearinghouse in the State Office of Planning and Research (“State Clearinghouse”) and to the County of Mendocino for distribution to the public. The Tribe shall also post the Notice of Preparation on its website. The Notice of Preparation shall provide all Interested Parties, as defined in section 2.15, with information describing the Project and its potential Significant Effects on the Off-Reservation Environment sufficient to enable Interested Parties to make a meaningful response or comment.

At a minimum, the Notice of Preparation shall include all of the following information:

- (1) A description of the Project;
  - (2) The location of the Project shown on a detailed map, preferably topographical, and on a regional map; and
  - (3) The probable off-reservation environmental effects of the Project.
- (b) The Notice of Preparation shall also inform Interested Parties of the preparation of the draft TEIR and shall inform them of the opportunity to provide comments to the Tribe within thirty (30) days of the date of the receipt of the Notice of Preparation by the State Clearinghouse and the County of Mendocino. The Notice of Preparation shall also request Interested Parties to identify in their comments the off-reservation environmental issues and reasonable mitigation measures that the Tribe will need to have explored in the draft TEIR.

**Sec. 11.2.2. Notice of Completion of Draft TEIR.**

- (a) Within no less than thirty (30) days following the receipt of the Notice of Preparation by the State Clearinghouse and the County of Mendocino, the Tribe shall file a copy of the draft TEIR and a Notice of Completion with the State Clearinghouse, the County of Mendocino, and the California Department of Justice, Office of the Attorney General. The Tribe shall also post the Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include the following information:
- (1) A brief description of the Project;
  - (2) The proposed location of the Project;
  - (3) An address where copies of the draft TEIR are available; and

(4) Notice of a period of at least forty-five (45) days during

which the Tribe will receive comments on the draft TEIR.

(b) The Tribe will submit forty-five (45) copies each of the draft TEIR and the Notice of Completion to the County of Mendocino, which will be asked to serve in a timely manner the Notice of Completion to all Interested Persons and asked to post public notice of the draft TEIR at the office of the Board of Supervisors of the County of Mendocino and to furnish the public notice to the public libraries serving the County of Mendocino. In addition, the Tribe will provide public notice by at least one of the procedures specified below:

(1) Publication at least one time by the Tribe in a newspaper of general circulation in the area affected by the Project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas; or

(2) Direct mailing by the Tribe to the owners and occupants of property adjacent to, but outside, the Indian lands on which the Project is to be located. Owners of such property shall be identified as shown on the latest equalization assessment roll.

**Sec. 11.2.3. Issuance of Final TEIR.**

(a) The Tribe shall prepare, certify and make available to the County of Mendocino, the State Clearinghouse, and the California Department of Justice, Office of the Attorney General, at least ninety (90) days before the completion of negotiations pursuant to section 11.1 a Final TEIR, which shall consist of:

(1) The draft TEIR or a revision of the draft;

- (2) Comments and recommendations received on the draft TEIR, either verbatim or in summary;
  - (3) A list of persons, organizations, and public agencies commenting on the draft TEIR;
  - (4) The responses of the Tribe to significant environmental points raised in the review and consultation process; and
  - (5) Any other information added by the Tribe.
- (b) The Tribe shall reimburse the County of Mendocino for copying and mailing costs resulting from making the Notice of Preparation, Notice of Completion, and Draft TEIR available to the public under this section 11.0.

**Sec. 11.2.4. Failure to Prepare Adequate TEIR.** The Tribe's failure to prepare an adequate TEIR when required may warrant an injunction or other appropriate equitable relief where appropriate.

**Sec. 11.2.5. Tribe's 2007 Final TEIR.** The Tribe prepared a Final TEIR for a new Gaming Facility in June 2007 ("2007 Final TEIR"). The 2007 Final TEIR shall be acceptable to the State and no new TEIR shall be required only if the scope of the Project for the new Gaming Facility is the same or smaller than that described in the 2007 Final TEIR and the 2007 Final TEIR is acceptable to the County of Mendocino. If the conditions in this section are satisfied, then the Tribe shall be deemed to have satisfied section 11.2 through and including section 11.4 for the Project described in the 2007 Final TEIR.

**Sec. 11.3 Arbitration.**

- (a) In order to foster good government-to-government relationships and to assure that the Tribe is not unreasonably prevented from engaging in the activities covered by this Amended Compact, if the County of Mendocino and the Tribe are unable to reach an agreement as to the terms of the written agreement provided in section 11.1 within ninety (90) days of the submission of the Final TEIR, or such further time as the Tribe or the County of

Mendocino (for purposes of this section, the “parties”) may agree in writing, any party may demand binding arbitration before a single arbitrator employed by JAMS as set forth herein with respect to any remaining disputes arising from, connected with, or related to the negotiation of the agreement.

- (b) The arbitration shall be conducted as follows:
- (1) Each party shall exchange with each other within five (5) days of the demand for arbitration its last, best written offer made during the negotiation pursuant to section 11.1.
  - (2) The arbitrator shall schedule a hearing to be heard within thirty (30) days of his or her appointment unless the parties agree to a longer period.
  - (3) The arbitrator shall be limited to awarding only one (1) of the offers submitted, without modification, based upon that proposal which best provides feasible mitigation of Significant Effects on the Off-Reservation Environment and on public safety and most reasonably compensates for public services pursuant to section 11.1, subdivision (b), without unduly interfering with the principal objectives of the Project or imposing environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate impacts of other projects of a similar scale in the surrounding area, to the extent there are such other projects.
  - (4) The arbitrator shall take into consideration whether the Final TEIR provides the data and information necessary to enable the County of Mendocino to determine both whether the Project may result in a Significant Effect on the Off-Reservation Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect.

- (5) If a respondent does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the claimant shall submit such evidence as the arbitrator may require therefor.
- (c) Review of the resulting arbitration award is waived.
- (d) In order to effectuate this section, and in the exercise of its sovereignty, the Tribe agrees to expressly waive, and waive its right to assert, sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the other party's obligation to arbitrate, (ii) enforce or confirm any arbitral award rendered in the arbitration, (iii) enforce or execute a judgment based upon the award, or (iv) enforce the agreement required by section 11.1.
- (e) The arbitral award shall become part of the written agreement required under section 11.1.
- (f) The parties shall equally share the costs of JAMS and the arbitrator, but shall otherwise bear their own costs and attorney fees.

**Sec. 11.4. Future Projects.** The Tribe agrees not to undertake during the term of this Amended Compact any additional Projects arising out of, connected with, or relating to the Gaming Operation or Gaming Activities, which may have any Significant Effect on the Environment, except pursuant to new agreements with the County of Mendocino and pursuant to the procedures set forth in sections 11.1, 11.2, and 11.3. The Tribe further agrees that before the commencement of a Project, and no later than the issuance of the Final TEIR pursuant to section 11.2.3 for any Projects other than the Project described in the 2007 Final TEIR, as defined in section 11.2.5, the Tribe shall negotiate with the California Department of Transportation or the State Designated Agency and shall enter into an enforceable written agreement with the California Department of Transportation or the State Designated Agency to provide for timely mitigation of all direct traffic impacts of the Project on the State highway system and facilities and to pay the Tribe's fair share of cumulative traffic impacts of the Project on the State highway system and facilities where such

impacts are attributable, in whole or in part, to the Project. The agreement shall provide that any mitigation for direct impacts shall be completed prior to commencement of operations of any Gaming Facility, Gaming Facility expansion, or other facility constructed as part of the Project. An Encroachment Permit issued by the California Department of Transportation shall be required for any work performed within the State highway right-of-way, for any required access to the State highway system, or for any change-in-use to an existing access or Encroachment Permit. The Tribe agrees to comply with the California Environmental Quality Act and prepare any environmental documents as required for issuance of the encroachment permit.

## **SECTION 12.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.**

**Sec. 12.1. General Requirements.** The Tribe shall not conduct Class III Gaming in a manner that endangers the public health, safety, or welfare; provided, however, that nothing herein shall be construed to make applicable to the Tribe any state laws or regulations governing the use of tobacco.

**Sec. 12.2. Tobacco.** Notwithstanding section 12.1, the Tribe has agreed to provide a non-smoking area in the Gaming Facility that exists as of the effective date of this Amended Compact, and to utilize a ventilation system throughout the new Gaming Facility, as defined in section 4.3.1, subdivision (a)(1), that exhausts tobacco smoke to the extent reasonably feasible under existing state-of-the-art technology, and further agrees not to offer or sell tobacco cigarettes or tobacco products to anyone under eighteen (18) years of age.

**Sec. 12.3. Health and Safety Standards.** For the purposes of this Amended Compact, the Tribe shall:

- (a) Adopt and comply with standards no less stringent than state public health standards for food and beverage handling. The Tribe shall allow, during normal operation hours, inspection of food and beverage services in the Gaming Facility by state, county, or city health inspectors, whichever inspector would have jurisdiction but for the Gaming Facility being on Indian

lands, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Any report or other writing by the state, county, city or federal health inspectors shall be transmitted within twenty-four (24) hours to the State Gaming Agency and the Tribal Gaming Agency. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state, county, or city health inspectors, but any violations of the standards shall be treated as violations of this Amended Compact and may serve as a basis to issue, pursuant to section 13.0, orders requiring corrective action, including, without limitation, an order to enjoin the food and beverage operations of the Gaming Facility where warranted to protect public health or safety.

- (b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California. The Tribe shall allow, during normal operation hours, inspection and testing of water quality at the Gaming Facility by state, county, or city health inspectors, whichever inspector would have jurisdiction but for the Gaming Facility being on Indian lands, to assess compliance with these standards, unless inspections and testing are routinely made by an agency of the United States pursuant to federal law to ensure compliance with federal water quality and safe drinking water standards. Any report or other writings by the state, county, city or federal health inspectors shall be transmitted within twenty-four (24) hours to the State Gaming Agency and the Tribal Gaming Agency. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state, county, or city health inspectors, but any violations of the standards shall be treated as violations of this Amended Compact and may serve as a basis to issue, pursuant to section 13.0, orders requiring corrective action, including, without limitation, an order to enjoin the use or disposal of water at the Gaming Facility where warranted to protect public health or safety.

- (c) Comply with the building and safety standards set forth in section 6.4.2.
- (d) Adopt and comply with standards no less stringent than federal and state workplace and occupational health and safety standards. The Tribe will allow for inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are regularly made by an agency of the United States government to ensure compliance with federal workplace and occupational health and safety standards. The Tribe shall give notice to the State Gaming Agency of each federal inspection and provide a copy of any reports from said inspection within five (5) business days of the inspection. Failure to timely give such notice shall be treated as conclusive evidence that no such inspection took place. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state inspectors, but any violations of the standards shall be treated as violations of this Amended Compact and may serve as a basis to issue, pursuant to section 13.0, orders requiring corrective action, including, without limitation, an order to enjoin employee entry into the Gaming Facility to the extent employee health or safety is endangered by the failure to comply with the workplace and occupational health and safety standards.
- (e) Adopt and comply with tribal codes to the extent consistent with the provisions of this Amended Compact and other applicable federal law regarding public health and safety.
- (f) Adopt and comply with standards no less stringent than federal laws and state laws forbidding employers from discrimination in connection with the employment of persons working for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability; provided that nothing herein shall preclude the Tribe from giving a preference in employment to members of the Tribe pursuant to a duly adopted Tribal ordinance.

- (g) Adopt and comply with state laws prohibiting a gambling enterprise from cashing any check drawn against a federal, state, county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.
- (h) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting a gambling or other enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging for no charge or at reduced prices at a gambling establishment, lodging facility, or other enterprise as an incentive or enticement.
- (i) Adopt and comply with state laws, if any, prohibiting extensions of credit.
- (j) Comply with provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to gambling establishments.

**Sec. 12.4. Tribal Gaming Operation and Gaming Facility Standards Ordinance.** The Tribe shall adopt in the form of an ordinance the standards described in subdivisions (a) through (j) of section 12.3 to which the Gaming Operation and Gaming Facility is held, and shall transmit the ordinance to the State Gaming Agency not later than thirty (30) days after the effective date of this Amended Compact. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, or the express adoption of an applicable federal and/or state statute or regulation, as the case may be, in respect to any such matter, the otherwise applicable federal and/or state statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

**Sec. 12.5. Insurance Coverage and Claims.**

- (a) The Tribe shall obtain and maintain commercial general liability insurance consistent with industry standards for non-tribal casinos in the United States underwritten by an insurer

with an A.M. Best rating of A or higher, which provides coverage of no less than five million dollars (\$5,000,000) per occurrence for bodily injury, personal injury, and property damage arising out of, connected with, or relating to the operation of the Gaming Facility or Gaming Activities (“Policy”). To effectuate the insurance coverage, the Tribe shall expressly waive, and waive its right to assert, sovereign immunity up to the greater of five million dollars (\$5,000,000) or the limits of the Policy, in accordance with the Tribal ordinance referenced in subdivision (b), in connection with any claim for bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility or the Gaming Activities, including, without limitation, injuries resulting from entry onto the Tribe’s land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has expressly waived, and waived its right to assert, sovereign immunity for the purpose of arbitration of those claims up to the greater of five million dollars (\$5,000,000) or the limits of the Policy referred to above and for the purpose of enforcement of any ensuing award or judgment, and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgment shall not be deemed to waive or otherwise limit the Tribe’s sovereign immunity for any portion of the claim that exceeds five million dollars (\$5,000,000) or the Policy limits, which ever is greater.

- (b) The Tribe shall adopt, and at all times hereinafter shall maintain in continuous force, an ordinance that provides for all of the following:
  - (1) The ordinance shall provide that California tort law, including all applicable statutes of limitations, shall govern all claims of bodily injury, personal injury, or

property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including, without limitation, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; provided that California law governing punitive damages need not be a part of the ordinance. Further, the Tribe may include in the ordinance required by this subdivision a requirement that a person with claims for money damages against the Tribe file those claims within the time periods applicable for the filing of claims for money damages against public entities under California Government Code section 810, et seq.

- (2) The ordinance shall also expressly provide for waiver of the Tribe's sovereign immunity and its right to assert sovereign immunity with respect to the arbitration of such claims but only up to the greater of five million dollars (\$5,000,000) or the limits of the Policy; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds five million dollars (\$5,000,000) or the Policy limits, whichever is greater.
  - (3) The ordinance may also request that the claimant first exhaust the Tribe's administrative remedies for resolving the claim, provided that the only remedy for a claimant's failure to exhaust the administrative remedies is a stay of any litigation pending their exhaustion and provided further that the exhaustion not take more than one hundred twenty (120) days and that the claimant be advised in writing of the administrative remedies within seven (7) days of the Tribe's receipt of notice of the claim.
- (c) In the event the Tribe fails to adopt the ordinance specified in subdivision (b), the tort law of the State of California, including applicable statutes of limitations, shall apply to all claims of

bodily injury, personal injury, and property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility.

- (d) Employees or authorized agents of the Tribe may not invoke, and the Tribe shall not invoke on behalf of any employee or agent, the Tribe's sovereign immunity in connection with any claim for, or any judgment based on any claim for, intentional injury to persons or property committed by the employee or authorized agent, without regard to the Tribe's insurance limits. Nothing in this subdivision prevents the Tribe from invoking sovereign immunity on its own behalf or authorizes a claim against the Tribe or a tribally owned entity.

**Sec. 12.6. Participation in State Statutory Programs Related to Employment.**

- (a) The Tribe agrees that it will participate in the State's workers' compensation program with respect to employees employed at the Gaming Operation or Gaming Facility. The workers' compensation program includes, but is not limited to, state laws relating to the securing of payment of compensation through one or more insurers duly authorized to write workers' compensation insurance in this state or through self-insurance as permitted under the State's workers' compensation laws. All disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board pursuant to the California Labor Code. The Tribe hereby consents to the jurisdiction of the Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement. The parties agree that independent contractors doing business with the Tribe are bound by all state workers' compensation laws and obligations.
- (b) The Tribe agrees that it will participate in the State's program for providing unemployment compensation benefits and

unemployment compensation disability benefits with respect to employees employed at the Gaming Operation or Gaming Facility, which participation shall include compliance with the provisions of the California Unemployment Insurance Code, and the Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.

- (c) As a matter of comity, with respect to persons, including nonresidents of California, employed at the Gaming Operation or Gaming Facility or paid items of income by the Tribe or Gaming Operation for work or services conducted at the Gaming Facility, the Tribe shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and, except for Tribal members living on the Tribe's reservation, the California Revenue and Taxation Code, and the regulations thereunder, and shall forward such amounts as provided in such Codes to the State.

**Sec. 12.7. Emergency Services Accessibility.** The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

**Sec. 12.8. Alcoholic Beverage Service.** Purchase, sale and service of alcoholic beverages shall be subject to California state law.

**Sec. 12.9. Possession of Firearms.** The possession of firearms by any person in the Gaming Facility is prohibited at all times, except for federal, state, or local law enforcement personnel or Tribal law enforcement or security personnel authorized by Tribal law and federal or state law to possess firearms at the Gaming Facility.

**Sec. 12.10. Labor Relations.** The Gaming Activities authorized by this Amended Compact may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto as Appendix D and the Gaming Activities may only continue as long as the Tribe maintains the ordinance. The Tribe shall provide written notice to the State that it has adopted the ordinance, along with a copy of the ordinance,

before commencing the Gaming Activities authorized by this Amended Compact.

## **SECTION 13.0. DISPUTE RESOLUTION PROVISIONS.**

**Sec. 13.1. Voluntary Resolution.** In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that arise under this Amended Compact by good faith negotiations whenever possible. Therefore, except for the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the Tribe and the State shall seek to resolve disputes by first meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of the performance and compliance of the terms, provisions, and conditions of this Amended Compact, as follows:

- (a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth the facts giving rise to the dispute and with specificity, the issues to be resolved.
- (b) The other party shall respond in writing to the facts and issues set forth in the notice within fifteen (15) days of receipt of the notice, unless both parties agree in writing to an extension of time.
- (c) The parties shall meet and confer in good faith by telephone or in person in an attempt to resolve the dispute through negotiation within thirty (30) days after receipt of the notice set forth in subdivision (a), unless both parties agree in writing to an extension of time.
- (d) If the dispute is not resolved to the satisfaction of the parties after the first meeting, either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.
- (e) Disagreements that are not otherwise resolved by arbitration or other mutually agreed means may be resolved in the United

States District Court in the judicial district where the Tribe's Gaming Facility is located, or any state court of competent jurisdiction in Mendocino County. The disputes to be submitted to court action include, but are not limited to, claims of breach of this Amended Compact, provided that the remedies expressly provided in section 13.4, subdivision (a)(ii) are the sole remedies available to either party for issues arising out of this Amended Compact and, notwithstanding any other provision of law or this Amended Compact, neither the State nor the Tribe shall be liable for damages or attorney fees in any action based in whole or part on the fact that the parties have either entered into this Amended Compact, or have obligations under this Amended Compact. The parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

- (f) In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the State on the ground that the Tribe has failed to exhaust its state administrative remedies, and in no event may the State be precluded from pursuing any arbitration or judicial remedy against the Tribe on the ground that the State has failed to exhaust any Tribal administrative remedies.

**Sec. 13.2. Arbitration Rules.** Unless otherwise specified in this Amended Compact, arbitration shall be conducted before a single arbitrator employed by JAMS, and shall be held in the federal judicial district in which the Gaming Facility is located at a location selected by the arbitrator. Each side shall initially bear one-half the costs and expenses of JAMS and the arbitrator, but the arbitrator shall award the prevailing party its costs, including the costs of JAMS and the arbitrator; however, the parties shall bear their own attorney fees. The provisions of section 1283.05 of the California Code of Civil Procedure shall apply, provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, shall give reasons for the decision, and shall be binding. Judgment on the award may be entered in any federal or state court having jurisdiction thereof.

**Sec. 13.3. No Waiver or Preclusion of Other Means of Dispute Resolution.** This section 13.0 may not be construed to waive, limit, or restrict any remedy to address issues not arising out of this Amended Compact that is otherwise available to either party, nor may this section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of Amended Compact dispute resolution, including, without limitation, arbitration or mediation.

**Sec. 13.4. Limited Waiver of Sovereign Immunity.**

- (a) For the purpose of actions or arbitrations based on disputes between the State and the Tribe that arise under this Amended Compact and the enforcement of any judgment or award resulting therefrom, the State and the Tribe expressly waive their right to assert their sovereign immunity from suit and enforcement of any ensuing judgment or arbitral award and consent to the arbitrator's jurisdiction and further consent to be sued in federal or state court, as the case may be, provided that (i) the dispute is limited solely to issues arising under this Amended Compact, (ii) neither side makes any claim for monetary damages (except that payment of any money required by the terms of this Amended Compact may be sought, and injunctive relief, specific performance (including enforcement of a provision of this Amended Compact requiring the payment of money to one or another of the parties), and declaratory relief may be sought), and (iii) nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State with respect to any third party that is made a party or intervenes as a party to the action.
- (b) In the event that intervention, joinder, or other participation by any additional party in any action between the State and the Tribe would result in the waiver of the Tribe's or the State's sovereign immunity as to that additional party, the waivers of either the Tribe or the State provided herein may be revoked, except where joinder is required to preserve the court's jurisdiction, in which case the State and the Tribe may not revoke their waivers of sovereign immunity as to each other.

- (c) The waivers and consents to jurisdiction expressly provided for under this section 13.0 and elsewhere in this Amended Compact shall extend to all arbitrations and civil actions authorized by this Amended Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm, modify, or vacate any arbitral award or to enforce any judgment, and any appellate proceeding emanating from any such proceedings. Except as stated herein or elsewhere in this Amended Compact, no other waivers or consents to be sued, either express or implied, are granted by either party.

#### **SECTION 14.0. EFFECTIVE DATE AND TERM OF AMENDED COMPACT.**

**Sec. 14.1. Effective Date.** This Amended Compact shall not be effective unless and until all of the following have occurred:

- (a) The Amended Compact is ratified in accordance with California state law; and
- (b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. § 2710(d)(3)(B).

#### **Sec. 14.2. Term of Amended Compact; Termination.**

- (a) Once effective, this Amended Compact shall be in full force and effect for state law purposes until December 31, 2032.
- (b) If the conditions precedent specified in section 4.2, subdivision (c), are not satisfied within thirty (30) months of the effective date of this Amended Compact, then the term of this Amended Compact shall be that of the 2004 Compact, which is until December 31, 2025.
- (c) Either party may bring an action in federal court, after providing a thirty (30)-day written notice of an opportunity to cure any alleged breach of this Amended Compact, for a declaration that the other party has materially breached this

Amended Compact or that a material part of this Amended Compact has been invalidated. Unless the declaration is stayed, upon issuance of such a declaration by the trial court, the complaining party may unilaterally terminate this Amended Compact upon service of written notice on the other party. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the Superior Court for Mendocino County. The parties expressly waive their immunity to suit for purposes of an action under this subdivision pursuant to and subject to the qualifications stated in section 13.4.

**SECTION 15.0. AMENDMENTS; RENEGOTIATIONS; LOSS OF EXCLUSIVITY.**

**Sec. 15.1. Amendment by Agreement.** The terms and conditions of this Amended Compact may be amended at any time by the mutual and written agreement of both parties during the term of this Amended Compact set forth in section 14.2, subdivision (a), provided that each party voluntarily consents to such negotiations in writing. Any amendments to this Amended Compact shall be deemed to supersede, supplant and extinguish all previous understandings and agreements on the subject.

**Sec. 15.2. Negotiations for a New Compact.** No sooner than eighteen (18) months before the termination date of this Amended Compact set forth in section 14.2, subdivision (a), either party may request the other party to enter into negotiations to extend the term of this Amended Compact or to enter into a new Class III Gaming compact. If the parties have not agreed to extend the term of this Amended Compact or have not entered into a new compact by the termination date in section 14.2, subdivision (a), this Amended Compact shall automatically be extended for one (1) calendar year.

**Sec. 15.3. Requests to Amend or to Negotiate a New Compact.** All requests to amend this Amended Compact or to negotiate to extend the term of this Amended Compact or to negotiate for a new Class III Gaming compact shall be in writing, addressed to the Tribal Chairperson or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis

supporting the request. If the request meets both the requirements of this section and section 15.1 for an amendment to this Amended Compact, or the requirements of this section and section 15.2 for a new Class III Gaming compact, the parties shall confer promptly and determine within forty-five (45) days of the request a schedule for commencing the negotiations, and both parties shall negotiate in good faith. The Tribal Chairperson and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

**Sec. 15.4. Loss of Exclusivity.** In the event the exclusive right of Indian tribes to operate Gaming Devices in California pursuant to article IV, section 19 subdivision (f), of the California Constitution is abrogated by an amendment to the Constitution or a final and dispositive California federal or state appellate judicial decision from which no further review can be granted, and another person, organization, or entity (other than a federally recognized Indian tribe) thereafter legally offers for play Gaming Devices in the Counties of Marin, Mendocino, or Sonoma, the Tribe shall have the right to:

- (a) terminate this Amended Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III Gaming, or
- (b) continue under the Amended Compact, except that (A) the Tribe will be entitled to cease the revenue contributions made pursuant to sections 4.3.1 and 5.2; (B) the Tribe shall compensate the State for its actual and reasonable costs of regulation, as determined by the State Director of Finance (unless the Tribe disputes said amount, in which case said amount, whether higher or lower, shall be subject to arbitration pursuant to section 13.2 of this Amended Compact); and (C) the maximum number of Gaming Devices that the Tribe may operate, notwithstanding section 4.1, shall be one thousand one hundred (1,100).

## **SECTION 16.0. NOTICES.**

Unless otherwise indicated by this Amended Compact, all notices required or authorized to be served shall be served by first-class mail at the following addresses, or to such other address as either party may designate by written notice to the other:

Governor  
Attention: Legal Affairs Secretary  
Governor's Office  
State Capitol  
Sacramento, California 95814

Tribal Chairperson  
Coyote Valley Band of Pomo Indians  
7751 North State Street  
Redwood Valley, California 95470

## **SECTION 17.0. CHANGES TO IGRA.**

This Amended Compact is intended to meet the requirements of IGRA as it reads on the effective date of this Amended Compact, and when reference is made to IGRA or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into this Amended Compact as if set out in full. Subsequent changes to IGRA that diminish the rights of the State or the Tribe may not be applied retroactively to alter the terms of this Amended Compact, except to the extent that federal law validly mandates that retroactive application without the State's or the Tribe's respective consent.

## **SECTION 18.0. MISCELLANEOUS.**

**Sec. 18.1. Third Party Beneficiaries.** Except to the extent expressly provided under this Amended Compact, this Amended Compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

**Sec. 18.2. Complete Agreement.** This Amended Compact, together with all appendices, sets forth the full and complete agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

**Sec. 18.3. Construction.** Neither the presence in another tribal-state compact of language that is not included in this Amended Compact, nor the

absence in another tribal-state compact of language that is present in this Amended Compact shall be a factor in construing the terms of this Amended Compact.

**Sec. 18.4. Successor Provisions.** Wherever this Amended Compact makes reference to a specific statutory provision, regulation, or set of rules, it also applies to the provision or rules, as they may be amended from time to time, and any successor provision or set of rules.

**Sec. 18.5. Ordinances and Regulations.** Whenever the Tribe adopts or amends any ordinance or regulations required to be adopted and/or maintained under this Amended Compact, in addition to any other Amended Compact obligations to provide a copy to others, the Tribe shall provide a copy of such adopted or amended ordinance or regulations to the Governor within thirty (30) days of the effective date of such ordinance or regulations.

**Sec. 18.6. Calculation of Time.** In computing any period of time prescribed by this Amended Compact, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Tribe's laws, State law, or federal law. Unless otherwise specifically provided herein, the term "days" shall be construed as calendar days.

**Sec. 18.7. Representations.**

- (a) The General Council of the Tribe is comprised of every member of the Tribe over the age of eighteen (18), and a majority of the General Council must vote to approve this Amended Compact pursuant to the process authorized by the Tribe's Constitution. The Tribe shall provide to the State proof in the form of a General Council resolution, along with all documents, including without limitation a copy of the Tribe's Constitution, adequate to show that the Tribe's Constitutional process for General Council approval of this Amend Compact, including the General Council's waiver of the Tribe's sovereign immunity and the right to assert sovereign immunity, has been followed. The Tribe expressly represents that as of the date of the undersigned's execution of this Amended Compact

the undersigned has the authority to execute this Amended Compact on behalf of the Tribe.

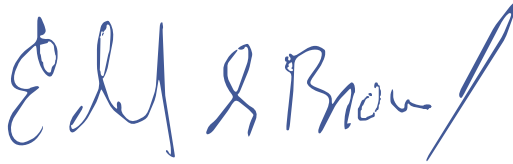
- (b) The Tribe further represents that it is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government.
- (c) In entering into this Amended Compact, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry into this Amended Compact is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this Amended Compact through the undersigned. If the Tribe fails to timely provide written proof of the undersigned's aforesaid authority to execute this Amended Compact and written proof of ratification by the Tribe's General Council as provided in subdivision (a), the Governor shall have the right to declare this Amended Compact null and void.
- (d) Notwithstanding any other provision of law, this Amended Compact shall not be submitted to the Secretary of the Department of the Interior for review and approval pursuant to 25 U.S.C. § 2710(d)(8), until the Tribe has provided the written proof required in subdivision (a) to the Governor and the Governor has authorized the California Secretary of State to submit this Amended Compact to the Secretary of the Department of the Interior for review and approval under IGRA.

**Sec. 18.8. Termination of Prior Compacts.** On the effective date of

this Amended Compact, any and all prior tribal-state Class III gaming compacts entered into between the Tribe and the State shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the undersigned sign this Amended Compact on behalf of the State of California and the Coyote Valley Band of Pomo Indians.

STATE OF CALIFORNIA



By Edmund G. Brown Jr.  
Governor of the State of  
California Executed this 18th  
day of July, 2012, at  
Sacramento, California

COYOTE VALLEY BAND  
OF POMO INDIANS



By John Feliz Jr.

Chairperson of the Coyote Valley Band of Pomo  
Indians Executed this 25<sup>th</sup> day of July, 2012 at  
Sacramento, California.

**ATTEST:**



Debra Bowen, Secretary of  
State State of California